UNITED NATIONS

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General Assembly Security Council

Distr.
GENERAL

A/47/912
S/25521
5 April 1993
ENGLISH
ORIGINAL: ENGLISH/SPANISH

GENERAL ASSEMBLY
Forty-seventh session
Agenda item 36
THE SITUATION IN CENTRAL AMERICA:
PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

SECURITY COUNCIL
Forty-eighth year

Note by the Secretary-General

The attached document contains the report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador (ONUSAL) up to 31 January 1993. As will be recalled (see S/23999, para. 3), it was decided that the work of ONUSAL in relation to the San José Agreement on Human Rights (A/44/971-S/21541, annex) would be the subject of a separate series of reports.

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ANNEX

Report of the Director of the Human Rights Division of the United Nations Observer Mission in El Salvador up to 31 January 1993

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I. INTRODUCTION

1. This report has been prepared in accordance with the decision concerning the verification of the human rights situation in El Salvador, contained in the report of the Secretary-General dated 26 May 1992 (S/23999 and Corr.1 and Add.1), that human rights would be the subject of a separate series of reports. The period covered by this report runs from 1 July 1992 to 31 January 1993. Mr. Philippe Texier ceased to be Director of the Division in July 1992. Some weeks later, the Secretary-General appointed as his replacement Mr. Diego García-Sayán, who took up his duties in mid-October 1992.

2. During the period under consideration, the peace process in El Salvador moved ahead, creating enhanced conditions for the enjoyment of human rights, especially after 15 December 1992 when the period of the cessation of the armed conflict ended and the conflict itself came to an end both formally and physically. This will have a definitely favourable impact on enhancing the protection of human rights in the country. However, the effective enjoyment of those rights will be assured only when the structural changes provided for in the peace agreements with a view to consolidating the rule of law, democratic life and the reconciliation of Salvadorian society are fully implemented.

3. In this report, the Director of the Human Rights Division submits to the Secretary-General and, through him, to the Security Council and the General Assembly, an overall assessment of the situation up to January 1993; an evaluation of active verification as a means of promoting and protecting human rights; an analysis of active verification of the human rights situation; and, lastly, the results of verification of the human rights components of other commitments made in the peace agreements (functioning of the judiciary and administration of justice, reform of the armed forces and the police, and action to provide information and education on human rights).

4. The report ends with a series of conclusions and recommendations, especially on matters requiring immediate action by the Government or legislative action to solve outstanding problems so that the peace process can be consolidated.

5. Starting in February 1993 and with a view to reporting more regularly to the Secretary-General and the General Assembly on the implementation of the San José Agreement (A/44/971-S/21541, annex) and of the human rights components of the other peace agreements, the Human Rights Division will submit quarterly reports.

6. The magnitude of this report, which covers an eight-month period, can be explained by two factors. First, the need to include in it both the results of the verification carried out since the appointment of the new Director of the Human Rights Division (October 1992) and those for the period immediately prior to his appointment, which were not covered by the fifth report (June to September 1992). Secondly, because a number of adjustments in verification procedures, including revised methodologies, were introduced in November 1992 to enhance the efficiency of the Division's work. As a result, while the report covers a considerable period of time, this has allowed actual trends in the situation to be analysed in greater depth.

7. Lastly, it should be mentioned that the basic frame of reference for drafting the report was the idea that active verification of human rights in El Salvador, as part of an unprecedented, integrated peace-keeping operation, is intended not only to provide information on the existing human rights situation and to verify implementation of the agreements in this area, but also to contribute to efforts by the parties, the State and society to adopt consensus approaches and methods which will make it possible to reverse and overcome those situations in which the effective enjoyment of human rights is still not assured, even though the country has come a long way from the situation that existed prior to the conclusion of the peace agreements.

II. OVERALL ASSESSMENT OF THE SITUATION

8. Since the signing of the peace agreements, the question of human rights in El Salvador has been viewed in the context of a new political situation characterized, by contrast with the pre-existing situation, by the shared determination of all domestic forces to make the institutional changes needed to carry out a process establishing the full applicability of the rule of law, put an end to the armed conflict and reconcile Salvadorian society.

9. Accordingly, the analysis and evaluation of the human rights situation in the country following the signing of the peace agreements must fall within this frame of reference, in other words, it must be seen as an integral part of a process in which the parties to the conflict and the other political forces in the country undertook to ensure the enjoyment of human rights and fundamental freedoms as an essential component of peace and democracy.

10. On 15 December 1992, peace became a reality in El Salvador. The cease-fire period established in the agreements came to an end, and with it the armed conflict signalling the attainment of one of the goals of the Geneva Agreement of 4 April 1990 (A/46/551-S/23128, annex), that of ending an armed conflict that for over a decade had kept the population under fire from a civil war which claimed tens of thousands of lives.

11. With peace restored, this leaves the commitments aimed at achieving the other three goals agreed on by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional for the peace process (FMLN): promoting the democratization of the country, guaranteeing unrestricted respect for human rights and reunifying Salvadorian society.

12. Ending the conflict was not a process limited to halting the fighting, it was a comprehensive process for establishing a democratic order based on a series of substantive changes in national institutions, including the armed forces. These changes have been taking place as part of the implementation of the peace agreements. A variety of difficulties have arisen, some of them quite substantial, and these continue to affect the process, but experience has shown that the political will of the parties and the pressure of the legitimacy gained by the peace process generally prevail over problems which were, moreover, to be expected in a United Nations-verified peace-keeping operation whose magnitude and procedures are without historical precedent.

13. As the Secretary-General, Mr. Boutros Boutros-Ghali, has said, for the United Nations, "involvement in El Salvador has been a pioneering experience. It is the first in a new generation of United Nations operations whose purpose is post-conflict peace-building." 1/

14. In the new international post-cold-war situation, the integrated peace-keeping operation in El Salvador has indeed been a pioneering experience, in that it goes beyond the already important task of ending conflict and making peace. Precisely what distinguishes peacemaking and peace-keeping in El Salvador is the fact that the peace agreements provide for an interrelated series of tasks to be carried out by internal actors, and verified by the United Nations, with a view to generating within the State and society the necessary institutional and political conditions for the effective functioning of democracy in accordance with the rule of law while, at the same time, promoting changes in the relationship between the State and society with the ultimate goal of achieving national reconciliation and reunification.

15. This integrated approach to the peace process explains the diversity of the specific agreements reached by the parties, agreements which they are implementing, in a major effort of national consultation with all political forces, through the National Commission for the Consolidation of Peace (COPAZ).

16. It is not in the nature of this report or within the mandate of the Director of the Human Rights Division to make specific assessments of compliance with the political and military agreements under the peace process. It is, however, essential to take those agreements as the appropriate, indispensable frame of reference for analysing trends in the human rights situation in the country, since the enjoyment of those rights depends in large measure on the proper functioning of the rule of law and, more specifically, on effective compliance with the peace agreements in the institutional, political and socio-economic spheres.

17. From this standpoint, we can see that both parties' strict observance of the cease-fire throughout its duration and their fulfilment of the outstanding obligations that were prerequisites for completing the cease-fire period had a decisive impact on trends in the human rights situation during the period covered by this report. The end of the armed conflict and the attainment of peace, in the context of the implementation of the agreements, are laying firm foundations in El Salvador for the consolidation of democratic life and the effective functioning of the rule of law. This in turn is creating for human rights a socio-political environment that is without precedent in the country's history.

18. After several decades of political instability and the alternation of periods of democracy with periods of authoritarian rule, the socio-political conditions now exist for the historical consolidation of democratic institutions. The amended Constitution responds to the modern conception of a State governed by the rule of law and provides basic guarantees for the constitutional and judicial protection of human rights in El Salvador. A consensus also exists among political forces in supporting democratic institutions, giving them greater legitimacy and stability.

19. At the same time, advances have been made in the secondary legislation envisaged by the peace agreements, especially as regards the Office of the National Counsel for the Defence of Human Rights, the restructuring of the armed forces, the creation of the National Civil Police (PNC), land transfers 2/ and the administration of justice. These legislative advances have kept pace with the implementation of the agreements. However, laws on their own do not solve problems and a complicated working agenda thus remains pending, especially as regards the land problem, the start-up of the National Civil Police and the effective, independent functioning of the judiciary.

20. The enjoyment of human rights, especially in societies of the kind found in a large number of developing countries, does not depend only on their substantive protection under the law but also on the functioning of democratic institutions. More than in any other sphere, in the human rights sphere it is necessary to have applicable norms to guarantee those rights and efficient, democratic institutional mechanisms. This explains the practical interrelationship that exists between democracy and the enjoyment of human rights. The judicial system has a decisive role to play here: only a strong administration of justice that is both effective and politically independent can ensure the judicial protection of human rights. Without this, democracy cannot be complete.

21. Another substantive factor in the historical experience of the relationship between democracy and human rights is the exercise of power in both formal and practical terms. Democracy cannot be completed unless lawfully constituted civilian authority exercises its constitutional powers fully and, conversely, unless the armed forces are fully subordinated to civilian authority, in conformity with the Constitution and with the very structure of a State governed by the rule of law.

22. One additional element in the relationship between democracy and human rights is the role played by mechanisms for overseeing security and public order. Far from undermining public order, the enjoyment of human rights does the opposite: it enables the State and society to protect the safety of citizens and the institutional and legal order using the means of coercion provided by law. Thus, the protection of human rights does not only mean that the State fulfils its duty to guarantee those rights but also that citizens, their organizations and institutions duly fulfil a number of duties.

23. As a result, in order to ensure the full exercise of human rights, democratic life must be accompanied by the strengthening of civilian society so that individuals, institutions and non-governmental organizations are able to perform fully their duty of protecting human rights, which means ensuring that they are not subject to any kind of intimidation, coercion or reprisals because of their individual or collective action.

24. In the case of El Salvador, the peace agreements, their progressive implementation, the end of the armed conflict and the establishment of peace as of 15 December 1992 have created the necessary legal, institutional, political and social conditions for democratic life to become a reality in which human rights can be exercised fully. However, the practical attainment of democracy is a more complex and contradictory process: it does not follow automatically from peace, but is a gradual process in which a variety of interests and wishes

must be accommodated. The transition from an authoritarian society to a democracy, from war to peace, from a system in which human rights are violated to one in which they are protected and guaranteed is complex, difficult and fraught with contradictions.

25. The country is now embarking on this process. The basic trends are promising, but Salvadorians still have a long way to go before their chosen model of a democratic, reconciled society in which human rights are respected becomes a reality.

26. Problems exist, and for the foreseeable future complex situations will continue to arise whose solution will require a renewed expression of political will on the part of all sectors and forces committed to the peace agreements.

27. It is essential to maintain the credibility and strength of the peace process. At the time of final drafting of this report (late February 1992), questions remained about the incomplete implementation of the recommendations of the Ad Hoc Commission on the purification of the armed forces, a situation which aroused the concern not only of the Secretary-General but also of the Security Council. As the Secretary-General has said, full implementation of the recommendations emanating from the Ad Hoc Commission's report is not just a substantive issue in the process of restructuring the armed forces, it has a direct bearing on the armed forces' obedience and constitutional subordination to civilian authority and is therefore a test of the development and consolidation of the rule of law in El Salvador.

28. The publication of the report of the Commission on the Truth will be equally significant, since the effective enjoyment of human rights in El Salvador's emerging democracy presupposes a spirit of national reunification and reconciliation. As the Secretary-General has said, the watershed in the process of reuniting Salvadorian society will come when the report of the Commission on the Truth becomes available, since "Salvadorians will only put the past behind them once the truth about the past is brought to light". 3/ Once the Commission's report is published, the Human Rights Division will give top priority to verifying effective implementation of its recommendations.

29. Moreover, the transition from war to peace brings with it a number of phenomena specific to situations of peace in which the end of armed conflict coincides with a reordering of legal, political and institutional structures. All these processes always carry within themselves the seeds of violence.

30. Personnel trained to see the use of force against internal enemies as legitimate, accustomed to handling military weapons and lacking the skills and opportunities for productive reintegration into civilian life may easily resort to different forms of anti-social violence. At the same time, lingering vestiges of politically motivated violence may find in such situations a breeding ground for the revival of serious human rights violations.

31. In the specific case of El Salvador, this phenomenon has coincided with difficulties and indecisiveness in moving ahead, with the urgency and efficiency that circumstances demanded, with the formation of the PNC and the start-up of its activities. The situation has been aggravated by the fact that no public security plan was designed and therefore implemented for the transitional period

which, as soon as the cessation of the armed conflict began, should have been accompanied by, inter alia, effective measures for the voluntary surrender or requisition of any military weapons in the possession of civilians, including private security personnel, former members of the armed forces and individuals who belonged to FMLN, as well as emergency measures for combating ordinary crime. At the time of final drafting of this report, the Government announced a national anti-crime emergency plan, the content and application of which will be considered in the next report of the Director of the Human Rights Division.

32. The lack of public safety as a result of ordinary crime has reached disturbing levels which, although not dramatic, are causing a pervasive feeling of insecurity among the population. Among other positive consequences, peace should have brought greater public safety. This was something the population could legitimately expect. However, the widespread perception of insecurity and the magnitude of the crime wave may inhibit the feeling of safety that peace was expected to bring, thereby hindering the process - necessary to the consolidation of democracy - of overcoming the culture of fear and intimidation.

33. The Director of the ONUSAL Human Rights Division is seriously concerned at this situation, although the seeds of violence are always present in such transition processes. History has shown that situations of more or less generalized criminal violence can, if not properly tackled, trigger a social context and subjective attitudes conducive to a resurgence of serious violations of human rights and fundamental freedoms.

34. What is more, trends such as those described above may give rise to currents of opinion which are opposed to key aspects of the model of democratic organization which Salvadorians chose through the peace agreements. This is foreseeable at least as regards the promotion of unconstitutional methods of combating crime or methods which depart significantly from the role which the armed forces should play in a State governed by the rule of law.

35. For these reasons, the report includes a section on violence and human rights which analyses this situation in greater detail while emphasizing that the violence in the country, although disturbing, is such that it can be controlled.

36. Despite this emerging situation, there is a definite trend towards an overall improvement in the human rights situation in the country, although some disturbing practices still persist. However, these positive trends in the situation of human rights in El Salvador must first grow and then be consolidated as part of the effective functioning of democracy if they are to be lasting and not just passing phenomena.

37. Above and beyond the specific evolution of the human rights situation, the enjoyment of human rights is always dependent on the legal, political and social environment which serves as their institutional context. As a result, even the progress we are now seeing is not necessarily irreversible, since it is linked to the consolidation of the rule of law, the dynamic of democratic life and, in particular, the process of demilitarization of the State and society.

38. That is why the human rights situation in El Salvador must be assessed in the broader context of violence and the functioning of the rule of law.

Accordingly, the Human Rights Division has adopted provisions in its procedures and working methods in the belief that the effective enjoyment of human rights in El Salvador is still an objective goal which will be achieved only with the consolidation of the institutions of the rule of law as defined by the peace agreements and with the strengthening of democratic life as the ultimate guarantor of the process. This involves the convergence of two elements: on the one hand, fulfilment by the State of its duty to provide guarantees and, on the other, the effective exercise of rights and duties by all citizens of El Salvador.

III. ACTIVE VERIFICATION AS A MEANS OF PROMOTING AND PROTECTING HUMAN RIGHTS

39. An appropriate methodology is fundamental for verifying human rights objectively. Methodological shortcomings can distort basic data and result in a failure to make a rigorous analysis of existing human rights violations or of the extent to which the enjoyment of those rights is guaranteed or undermined.

40. As a result, the active verification carried out by ONUSAL, through its physical presence in El Salvador and the systematic nature of its field work, combined with its investigatory powers, is a procedure whose distinctive feature is that it has the necessary means to corroborate the existence or otherwise of a violation.

41. Active verification is a systematic investigatory procedure designed to gather objective evidence to corroborate the existence of human rights violations. It is carried out through a process comprising various phases: first, the receipt of complaints or the reporting of a violation on the Mission's own initiative; second, the investigation or inquiry proper, which comprises a detailed follow-up of the facts, police and judicial investigations and the exercise of the Mission's fact-finding powers; third, if the facts are corroborated and it is found that there was no violation of human rights, the case is closed, but if verification reveals the opposite, recommendations are made either for compensating the injury done or for rectifying the situation which gave rise to or facilitated the violation; fourth, throughout the process, active verification involves using the Mission's good offices to contribute to the transparency and efficiency of police investigations, due process, safety of witnesses, etc., and its power of initiative to assist in overcoming existing situations of human rights violations.

42. In this connection, it must be pointed out that complaints, and statistics on complaints declared admissible, while indicative of the existence of violations and the starting point for verification procedures, do not necessarily presuppose the existence of a violation. There is no direct correlation between the number of complaints declared admissible and the number of violations that occurred. Quite the opposite: the number of complaints usually exceeds the number of proven violations.

43. In order to apply more effective criteria, the Human Rights Division introduced, on 15 November 1992, a methodological guide for active verification. The guide contains standard operational definitions for each category of right observed and uniform criteria for the classification of complaints. Its use

ensures that the entire process is conducted more rigorously and it is expected to permit a more objective analysis of trends in the human rights situation in El Salvador.

44. It will also make it possible to present statistics and trends not only for complaints declared admissible but also for the findings of verification, in other words, for proven violations.

IV. ANALYSIS OF ACTIVE VERIFICATION OF THE HUMAN RIGHTS SITUATION

A. Right to life

1. Deaths resulting from the violation of juridical guarantees and summary, arbitrary or extralegal executions

45. In the eight-month period from June 1992 to January 1993, the Human Rights Division declared admissible a total of 1,480 complaints. Of these, 106 concerned violations of the right to life (7.16 per cent) and 165 concerned death threats (11.15 per cent).

46. The classification "complaint declared admissible" is indicative of the likelihood of a human rights violation and the starting point for a verification process comprising a number of elements. Once complaints have been classified and declared admissible, the process of active verification, including the investigation and fact-finding phases, begins; this is followed by an evaluation, recommendations and the use of good offices to find solutions to existing problems.

47. Although, as we have said, these indicators do not confirm the existence or otherwise of the alleged violation, they make up a sample from which basic trends can be identified for actual situations in which the population alleges the existence of a violation.

48. Verification of complaints by the Human Rights Division, in cooperation with the Police Division, indicates that a large proportion of cases of death present the characteristics of ordinary crimes. At the same time, however, there continue to be murders, committed on a selective basis, for which there is solid evidence of political motives.

49. The ambiguity that characterizes many crimes makes it difficult to pinpoint the existence of a political motive. At the same time, the presence of apparently clear-cut evidence that the crime is an ordinary crime is not necessarily sufficient to classify it as a purely criminal act, since the political, institutional or trade union activity of the victim or his access to certain sources of information caution against ruling out the possibility of the simultaneous existence of political motives.

50. In most cases, the selectiveness of the perpetrators' action, the kind of weapons used and the circumstances and methods of the homicide leave no doubt that there was a deliberate intent to cause death. As a result, regardless of whether the investigation identifies elements characteristic of an ordinary crime, political intent must not be ruled out *a priori*.

51. The following cases verified by ONUSAL are representative of the trends mentioned.

Homicide of Mauricio Quintana Abrego (case No. ORSS/1719/92)

52. The victim was a lawyer and had worked for over 10 years for the intelligence service of the Armed Forces General Staff. According to his family's testimony, he was privy to a considerable amount of confidential

information. Bearing a grudge against the armed forces, he had recently shown a willingness to disclose this information to human rights bodies. On 24 August 1992, he was abducted and shot dead within 15 minutes, using an M-16 rifle, in the Santa Anita neighbourhood of San Salvador. He was found dead with his thumbs tied behind his back. The vehicle driven by his killers was used to watch the victim's home in the days following his murder. The Commission for the Investigation of Criminal Acts established that a number of criminals had taken part in the crime and arrested three of them. The three belong to a gang of assailants made up, inter alia, of former officers of the armed forces, who in this case could have acted "on instructions".

53. The motive does not seem to be robbery, although some cheques that the victim had on him were stolen and later cashed. In its verification report, the ONUSAL Regional Office at San Salvador stated that the murderers' modus operandi was similar to that of the death squads. The evidence gathered in the verification process points to a politically motivated extralegal execution.

Homicide of Santos Gabino Palacios Monterrosa (case No. ORSV/709/92)

54. The victim was machine-gunned and finished off with three shots in the head on 29 June 1992 on the outskirts of San Vicente. He was a member of the infantry battalion of the Armed Forces General Staff and had been involved in intelligence-gathering among the civilian population. The complaint was lodged by the General Staff itself. The identity of the killers was not reported, but it was specified that they had been in uniform and carrying M-16 rifles when they committed the murder. In verifying the murder, ONUSAL reviewed the results of the inquiries made by the San Vicente Second Criminal Court. None of the information which ONUSAL had received when the murder was reported by the General Staff was in the court records. The judge had not conducted any investigation, although ONUSAL had asked him to do so repeatedly. His response was that he did not have the necessary resources and that he was not going to seek the cooperation of any auxiliary organs; he said there was no point in asking the National Police for help, because they were bound to reply that they did not have the resources either and would refuse to carry out any investigation. The murder of Santos Gabino Palacios Monterrosa is not the only killing of a member of the armed forces involved in intelligence activities. A number of such killings have occurred since June 1992. As in the previous case, there are indications that the murder was an extralegal execution.

Homicide of Juan Adalberto Ayala Rivas (case No. ORSV/724/92)

55. On 3 August 1992, the victim, his five-year-old son and a driver were travelling by car on the Pan-American Highway towards San Vicente. They were intercepted by another vehicle from which there came a burst of machine-gun fire. Attempting to avoid the attack, the driver of the victim's vehicle swerved off the road and the car crashed into the entrance to a house. The other vehicle pulled up alongside the scene of the crash. One of its occupants began to "direct" the traffic driving by on the road while the other went up to the victim and shot him twice, killing him. Both Juan Adalberto Ayala Rivas and his driver were members of the Military Intelligence Battalion. The murderers have not been found. The evidence in this case points to what was clearly a politically motivated extralegal execution.

Death of Sergio Conrado Sandoval (case No. ORSA/734/92)

56. The victim, a tradesman, was a member of the Asociación de Desarrollo Campesino, Obrero y Artesanal Salvadoreña. He was murdered at his home on 28 July 1992. An eyewitness says that he saw a military vehicle with six uniformed soldiers inside drive past the victim's house twice, keeping it under observation, and then drive off to the barracks of Military Detachment No. 6 (DM-6). Almost immediately, a car with three civilians inside drew up. One of them, armed with a pistol, tried to abduct Conrado Sandoval, who was at the door to his house. In the struggle, one of the assailants shot and wounded the victim, who tried to escape but was gunned down by another of the attackers. The victim's mother witnessed the killing and identified her son's killer as a DM-6 sergeant by the name of Sibrian.

57. The Sonsonate National Police contacted DM-6 on 6 August 1992 to check whether they had a sergeant by the name of Sibrian. It was confirmed that there was a Sergeant René Edgardo Sibrian, who was on active duty. The police scheduled a line-up for the victim's mother to identify him but the DM-6 staff did not attend to them when they came to the barracks. When they returned the next day to identify him, they were told that Sergeant Sibrian was out on an assignment. Returning a third time, they were thwarted yet again. On that occasion, the military authorities reported that Sergeant Sibrian had not returned to barracks and that they would try to locate him using military procedures.

58. The judicial verification carried out by ONUSAL established that the judge of the Sonsonate Second Magistrates' Court initiated an investigation. He summoned the witnesses and took their statements. He informed ONUSAL legal officers that DM-6 staff had made inquiries. In reviewing the action taken by the judge, the Mission found a letter from the DM-6 legal section requesting a "certified copy" of the judicial proceedings for "military analysis".

59. When the corresponding military verification was carried out, it was found that Sergeant Sibrian had been classified a deserter, in accordance with military rules. He has not been found.

60. According to the findings of the verification, all the evidence shows that the victim was executed by members of DM-6, including Sergeant Sibrian, as was demonstrated when the victim's mother identified him from a photographic line-up ordered by the judge. A warrant has been issued for Sibrian's arrest. There is no evidence that the Military Detachment was responsible. However, according to the verification report by the ONUSAL Regional Office at Santa Ana, the facts indicate that the accused and the other assailants were warned, possibly by military superiors, that the National Police were looking for them. From the evidence, this would not be the first time that there was a cover-up or unlawful collusion by the military authorities. There also seems to be no doubt that the attack was deliberate and was clearly intended to cause the victim's death.

Death of Juan Arnulfo García Gámez (case No. ORSS/2015/92)

61. The victim was a member of the security staff of the Fuerzas Populares de Liberación (FPL), one of the forces in FMLN. He was killed by two gunshots on a bus on 17 November 1992. The National Police, the Salvadorian Red Cross, the

judge of the Ninth Magistrates' Court and a team of ONUSAL members went to the scene of the crime. The ONUSAL Regional Office at San Salvador took part in the autopsy carried out at the Institute of Forensic Medicine and confirmed that the victim had died from two gunshot wounds, one in the head and one in the neck. Arnulfo García Gámez had been working for three months as a security guard for FMLN commander Alberto Enríquez. He had previously served in the Salvadorian air force. The case is still under investigation, on the reasonable assumption that it was politically motivated.

62. As can be seen from some of the cases mentioned, there continue to be organized groups who carry out extralegal executions, often using military weapons, although the number and frequency of such executions have declined. The evidence seems to suggest that in some cases the actions of these organized groups may be politically motivated, while in others they may be a way of dispensing "private justice". The latter phenomenon is on the rise, especially in large urban areas.

63. An overall analysis of all the deaths verified as examples of violation of the right to life indicates that these fall into the following categories: deaths resulting from the use of excessive force or violent means by security forces; violent, non-political deaths involving methods comparable to extralegal execution; violent, non-political deaths attributable to criminal groups, gangs or organizations using extralegal means to combat ordinary crime (private justice); and politically motivated deaths or deaths which, given the victim's occupation (trade union, political or institutional), probably involved political factors.

64. The violations of the right to life that have occurred also point to differences between regions. In San Miguel, San Vicente, Usulután and Chalatenango, few, if any, deaths comparable to summary executions are reported, while the vast majority of recorded cases are concentrated in San Salvador and Santa Ana.

65. In addition, the indicators relating to complaints which have been declared admissible and the findings of active verification activities reveal a situation which, despite a decline in the number of cases, continues to be a cause for serious concern owing to the persistence of violent deaths which, though for the most part not comparable to summary, arbitrary or extralegal executions, amount to recurrent violations of the right to life.

2. Arbitrary or extralegal attempted homicides

66. Quite a large number of complaints relating to alleged attempted homicides or summary, arbitrary or extralegal executions in violation of juridical guarantees were declared admissible by the Human Rights Division. The characteristics of these complaints are much the same as those in cases of actual deaths. A discussion of a number of representative cases follows.

J. Eduardo Pineda Valenzuela (case No. ORSS/1646/92)

67. Mr. Pineda was Assistant National Counsel for Human Rights. He participated actively in the investigation of the Jesuit murders and the

El Mozote case. On 31 July 1992, he was seriously injured following an attack in which the perpetrators stole nothing from him and used his car only to escape. The Commission for the Investigation of Criminal Acts conducted an investigation and its findings were submitted to the judge on 25 January 1993, i.e., six months after the attack, without producing any positive results. In spite of the fact that proceedings were pending, the Commission suspended its investigation of the case and neither the judge nor the prosecutor have taken steps to clarify the facts.

José Alvaro Henríquez Quijada (case No. ORSS/2083/92)

68. Mr. Henríquez was a demobilized former combatant of the Ejército Revolucionario del Pueblo (ERP), a force belonging to FMLN. He was followed by an unknown person while travelling by bus on the Apopa-Quezaltepeque road on 19 December 1992. When he got off the bus, the person who had been following him approached him and shot him three times with a pistol, shouting "you killed one of my brothers". The National Police at Quezaltepeque came to the scene of the incident and detained the victim and his attacker. The next day, the victim was released but not before being fined for an alleged unspecified petty misdemeanour. On 22 December, the San Salvador Regional Office made inquiries at the offices of the National Police at Quezaltepeque. The police stated that they had no record of the case. As a result, no police or judicial investigation of any kind had been initiated. The case was closed, because it was impossible to verify the complaint.

Tomás Reyes Martínez Ramos, "Commander Ricardo" (case No. ORSS/656/92)

69. The victim, an official of the FMLN reconstruction committee for the south-eastern area, was returning by car to his home in El Salvador on 7 August 1992. His girlfriend opened the garage door so that the car could be parked. At that very moment, three armed men were observed getting out of taxi. According to the victim's testimony, the three men were carrying G-3 rifles and ran towards his car, firing at it, while he, perceiving the imminent danger, backed his car up. Bullets struck the interior of the car, but Reyes Martínez escaped unharmed.

70. According to witnesses interviewed by ONUSAL, two vehicles drove up 30 minutes after the attack. One of them was a four-wheel drive vehicle with polarized windows. An individual got out of the vehicle, looked for spent shells and asked how many shots had been fired. When ONUSAL experts went to the scene, they were unable to find any shells and were thus unable to ascertain what kind of weapon had been used.

71. Reyes Martínez complained to ONUSAL that weeks before the attack he had received threats from a military officer on active duty by the name of Andrés Hernández, who lived in the Department of Usulután. The investigations carried out by the National Police have been unavailing, which is not surprising since a thorough effort was not made, the inquiry being limited to questioning the victim and a few witnesses. The Division verified the case and concluded that the incident had been politically motivated, but was unable to establish the identity of the perpetrators.

Pablo Parada Andino, "Commander Goyo" (case No. ORSS/365/92)

72. At 11.30 p.m. on 11 October 1992, Commander Pablo Parada Andino, chief of the FMLN forces assembled at Las Pampas, Tecoluca, Department of San Vicente, was travelling in his car along the Pan-American Highway in the Department of Usulután. He was stopped by a road block that had been placed across the road. The attackers fired on him. Parada defended himself with his weapon. As a result of the incident, he was wounded by four bullets in the abdomen, the collar-bone and both legs. The victim managed to wound one of the attackers, who subsequently died. The identity of the dead attacker was José Noé López Maravilla, a soldier on active military duty assigned to the Fifth Infantry Brigade. It has not been possible to establish a link between the other attackers and the armed forces. According to the investigation conducted by ONUSAL, the attackers had set up a post on the highway from which to carry out criminal assaults. When Parada was ambushed, other victims of similar assaults, from whom valuables had been taken, were still at the scene.

73. The investigation established that the assault itself was an ordinary crime, but once again revealed the involvement of military personnel in acts of this kind and the unauthorized use of military weapons. After investigating the facts, ONUSAL sent a communication on the subject to the Minister of Defence, in which it pointed out the urgent need for the Ministry of Defence to take the necessary steps to deal with the apparent deficiencies in the control and use of armed forces weapons. The Parada Andino case is not an isolated incident as far as the involvement of members of the armed forces is concerned. It reflects a pattern of behaviour with regard to which military commanders must take drastic corrective action; otherwise, they would have to be considered, at the very least, to be guilty of negligence or permissiveness.

74. The Office of the National Counsel for the Defence of Human Rights investigated this case and came to conclusions similar to those reached by ONUSAL. In the relevant determination, the Counsel expressed concern at the absence of adequate control over military personnel and weapons and recommended to the Fifth Infantry Brigade that it take the necessary measures to avoid a recurrence of such acts.

75. It should be pointed out that, despite the systematic failure of the competent organs to discharge the State's obligation to provide guarantees, the sensitive findings arrived at in the investigation provide no grounds for asserting it is Government policy to encourage violations or that the Government is actively involved in such violations. Nevertheless, in the great majority of cases involving violations of the right to life, the conduct of the police and the judiciary is not only inappropriate, it is also alarming in that in many cases investigations are delayed or hampered or are conducted in such a desultory way as to jeopardize the results.

76. A case in point which provides a good illustration of the failure of the National Police to fulfil their functions is the death of Santos Gabino Palacios Monterrosa (case No. ORSV/709/92). The National Police at San Vicente had in their possession testimony from the victim's uncle, who had been with the victim when he was machine-gunned, as well as testimony from his wife and other individuals. However, police personnel did not bring the

evidence to the attention of the judge of the Second Criminal Court who was handling the case.

77. Some of the most glaring problems in the same vein include the absence of any policy governing the preservation of evidence relating to deaths or the taking of minimum care to preserve such evidence; the absence of any measures to ensure the safety of witnesses, and the improper handling of testimony; the failure to use the proper technical means to establish the cause, manner and time of death; the failure to perform autopsies in a significant number of cases, notwithstanding the commendable efforts of the Institute of Forensic Medicine; and the inefficiency of the judicial system and its auxiliary organs in identifying those responsible for deaths. This inability to investigate crimes is reflected in the failure of judges to show any initiative in taking the requisite legal steps in the early stages of the investigation; in the slow and delayed participation of the Office of the Attorney-General; in the meagre or invalid evidence gathered for the purpose of establishing criminal liability; and in lenience in investigating cases involving military personnel or agents of the security forces, the direct result of which is impunity.

78. To be sure, this situation has not come about by design. It is the result of structural problems affecting the administration of justice. However, both the judiciary and its subsidiary bodies have a responsibility to take urgent and necessary measures to overcome these glaring and serious deficiencies.

79. The difficulties encountered in investigating crimes involving violations of the right to life, including extralegal executions, and in identifying and punishing the guilty parties have not lessened to any significant degree. The matter is, of course, a subject of national debate and the Ministry of Justice has drafted a bill on criminal investigations which is being debated publicly. An evaluation of these efforts to find alternatives to the existing legal provisions and remedies for the current shortcomings is contained in section IV of this report.

3. Death threats

80. A statistical analysis of complaints declared admissible shows that death threats rank first among complaints involving violations of the right to life. Between June 1992 and January 1993, 165 complaints were declared admissible. A breakdown of these complaints by region shows that 34.55 per cent occurred in San Salvador, 30.91 per cent in Santa Ana; 14.55 per cent in Chalatenango; and 12.12 per cent in San Vicente. It is interesting to note that complaints from San Miguel are virtually non-existent (3.03 per cent).

81. Death threats as a violation of human rights pose obvious difficulties for verification activities, since the methods of establishing the facts are complex in both practical and procedural terms. In addition, there are subjective factors linked to the post-war situation which subsist and, which create the conditions for a large number of complaints.

82. The death threats recorded during the period reflect a pattern in which overtly political motives predominated over other causes.

83. The self-styled Frente Revolucionario Salvadoreño, a new clandestine group, issued a statement on 6 September 1992 in which it criticized both the Government and FMLN, warning the former that "if laws that starve the Salvadorian people to death continue to be enacted, our members will take up their rifles in accordance with revolutionary justice". On 8 September 1992, the Movimiento Cívico El Salvador Libre took out a paid advertisement in the newspaper El Mundo, in which it threatened the Archbishop of San Salvador, Monsignor Rivera y Damas. The Archbishop was the target of another death threat on 14 September, this time from the Ejército Salvadoreño Anticomunista. On 8 October, death threats were made against members of the Centro de Reorientación Familiar y Comunitaria (Family and Community Guidance Centre-CREFAC).

84. This campaign of intimidation, which coincided with the emergence of sensitive issues in the implementation of the peace agreements, reached its peak when several radio companies broadcast a communiqué issued by the Maximiliano Hernández Martínez Brigade on 22 October. In the communiqué, the Brigade announced that it would carry out the "death sentence" against 16 top FMLN leaders. At the same time, it warned ONUSAL personnel and foreign journalists that they should "leave the country" or "face the consequences of nationalist justice".

85. These acts of intimidation were not effectively investigated by the competent authorities. ONUSAL brought all the threats to the attention of the Minister of Defence and urged him to take the necessary measures to ensure the safety of ONUSAL personnel and all individuals against whom death threats had been made and to identify the members of the groups concerned and those responsible for the campaigns of intimidation conducted in the media. No reply has been received.

86. In addition to these kinds of public or overt threat made by organized groups, other types of death threats were recorded during the period under review. They range from selective threats against political figures, witnesses or the relatives of victims, to the threats which are commonly made in the context of a social and interpersonal relationship involving violence or the threat of the use of force. Many different motives have been noted. These include eliciting fear, preventing victims from having access to justice, hindering individuals from associating for legitimate purposes, whether political or trade union related, and threatening acts of "private justice".

87. In cases involving homicide and extralegal killings, the threats are also intended to deter witnesses and members of the victim's family.

88. Many of the cases recorded fall into the category of "other threats", which are linked mainly to various forms of intimidation, such as searching houses, intervening in private disputes on the side of one of the parties and infringing the lawful exercise of rights such as freedom of association.

89. As a rule, neither the National Police nor the judiciary have conducted serious investigations into death threats, and the result has been impunity for the perpetrators. The Division reiterates in this connection that one specific aspect of the State's duty to provide guarantees is the provision of effective

legal or other protection for persons and groups against whom death threats have been made and who are consequently at risk for extralegal execution.

90. This is particularly important when the threats originate with organized groups that can easily be identified, such as those using paid advertisements in the media to make threats. The State's duty to provide guarantees is all the greater in such cases. However, these responsibilities remain unfulfilled. It should be reiterated at the same time that the active verification conducted by ONUSAL objectively establishes that neither killings comparable to extralegal executions nor death threats and other threats constitute Government policies in El Salvador, even though in many cases the guilty parties are members of the armed forces or the security forces. The armed forces and the National Police bear responsibility to the extent that there is a failure on the part of their personnel to observe military and police discipline.

B. Right to integrity of person

1. Torture

91. During the period under review, torture was not practised on a systematic or massive scale in Salvadorian society. Hardly any cases occurred. This observation is based on consistent findings of active verification throughout the national territory. In the eight months covered by the present report, in the regions of Santa Ana, San Vicente, San Miguel and Usulután, no complaints of torture of any kind were received, nor was any case of torture discovered. Only in San Salvador (four cases) and Chalatenango (one case) were complaints received and declared admissible. Active verification of these cases established that torture had not taken place. In San Salvador, of the four complaints declared admissible, two did not meet the definition of torture, one did not even entail the violation of human rights, and two did not admit of verification. The case from Chalatenango did not involve torture, but rather ill-treatment.

92. In conducting its verification, ONUSAL uses, as its operational definition of torture, that contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46 of 10 December 1984, annex), which defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (art. 1, para. 1).

2. Ill-treatment

93. Between June 1992 and January 1993, the Human Rights Division declared admissible 1,197 complaints of ill-treatment. For operational purposes, the Mission classifies as ill-treatment all acts entailing physical or mental suffering or cruel, inhuman and degrading punishment not having the specific characteristics of torture.

94. Most of the cases are concentrated in the Departments of San Salvador and Santa Ana and relate mainly to incidents occurring at the time of an arrest. As a rule, the perpetrators have been officials of the National Police and the Municipal Police. Compared with the previous period, not only is ill-treatment verified by ONUSAL not on the decline but the trend is for the situation to become worse.

95. Most of the cases can be divided into two basic categories: ill-treatment resulting from the excessive and disproportionate use of force in the performance of police duties, and the use of ill-treatment with the clear intent to inflict physical harm on the victim and subject the victim to humiliating or degrading treatment. The following cases are representative.

Luis Armando Menjívar García, 16 years of age (Case No. ORSA/780/92)

96. On 31 August 1992, a patrol of the National Police stationed at El Congo, Department of Santa Ana, operating on the road to San Salvador, ordered the car in which the victim was riding to stop. When the victim was asked to show identification, he was unable to do so, because as a minor he did not have an identity document. The police stated their intention of arresting him and attempted to place him in restraints, which the minor resisted, One of the police officers then struck him with the butt of his rifle in the area of the left temple. The victim fell unconscious. He was taken to San Rafael Hospital (in Santa Tecla) by a member of the Legislative Assembly who happened to be passing by on the road. An emergency operation had to be performed on the victim, who had suffered cranial trauma with a fracture of the left temporal bone. The case is pending before the Third Criminal Court.

Marco Tulio Rodríguez, 27 years (Case No. ORSA/684/92)

97. On 29 June 1992, a complaint was lodged with the Santa Ana Regional Office that an individual had been brutally beaten by National Police personnel while attempts were being made to take him into custody in the vicinity of the bus terminal. The Regional Office investigated the matter and obtained testimony, reports and photographs which fully corroborate the complaint of ill-treatment and establish the seriousness of the injuries inflicted on the victim and the intent to cause injury. According to the medical report in the file on the case, the victim exhibited a "contusion of the left parietal bone measuring 3 cm. A wound measuring 2 cm on the left side of the forehead. Ecchymosis on the upper and lower eyelids of the right eye as a result of a blow. Circular excoriation, measuring 2 cm on the right hand. Excoriation on both shoulders. Oedema on the neck, measuring 4 cm in diameter. Excoriation of the gums, measuring 2 cm in diameter, with loss of the two top left incisors as a result of trauma." Upon being discharged after receiving medical treatment, the detainee had to be released for lack of any charges against him.

Walter Leonidas Bonilla Meléndez (Case No. ORSS/1768/92)

98. On 29 August 1992, Walter Leonidas Bonilla Meléndez was at a stall in the Tiendona Market in San Salvador. At around 11 p.m., uniformed members of the Municipal Police arrived and, without saying a word, began kicking him repeatedly in the abdomen. After the beating, the police officers dragged the victim to the exit of the market and left him there. Bonilla Meléndez went to the Salvadorian Green Cross post and from there was taken immediately to the Rosales Hospital. ONUSAL learnt that at the hospital he was diagnosed as having suffered internal injuries in the abdomen and that, owing to the severity of the injuries, an emergency operation had to be performed. The victim failed to recover and died a few days later as a result of the blows he received from the police officers. A complaint was lodged with the San Salvador Ninth Criminal Court. Proceedings were brought against four police officers who had been on duty the day of the incident, and the officers were made available to the judge by the Director of the Municipal Police. The judge ordered the pre-trial detention of one of the police officers, Juan Ramón Melgar, who was taken into custody as he was preparing to leave the country. ONUSAL is monitoring the trial and the active involvement of the Office of the Attorney-General of the Republic so far has been conspicuous.

99. Such cases of ill-treatment or the excessive use of force often result in the victim's death. Pedro Antonio Santos López (Case No. ORSS/1979/92) died on 7 November 1992 as a result of ill-treatment in the National Police Station at Soyapango, where he was being detained for drunkenness and disorderly conduct. On 29 October 1992, Roberto Vásquez (Case No. ORSS/1945/92) died as a result of nine bullet wounds inflicted by detectives of the National Police who were riding in a car without licence plates. The shots had been fired without warning, apparently in an attempt to make an arrest. The victim resisted. The National Police refused to disclose evidence which might shed some light on the circumstances of the incident and even held incommunicado for over a day the only person arrested as a result of the incident.

100. The complaints verified by ONUSAL reveal a serious problem of abuse of authority by the National Police and the Municipal Police which is still not being dealt with adequately by the political, police and judicial authorities. In addition, there is no proper internal administrative police procedure for investigating such violations and punishing the guilty parties. Neither the Office of the Attorney-General nor the judiciary are performing their functions effectively in such cases, all of which creates an impression of tolerance of such ill-treatment, which the police perpetrate so often as to render the practice systematic.

101. There are, however, notable exceptions to such negligence on the part of the judicial authorities. There have been cases where members of the judiciary have acted very responsibly and effectively, as can be seen from the verification of case No. ORSA/871/92: Héctor Antonio Guevara Arana was severely beaten by members of the National Police at Chalchuapo, for no reason, when he was painting a sign in the street. According to the complaint, a policeman asked whether he had permission to paint. When he replied that he was doing it with the authorization of the owner of the shop, the victim was attacked by the policeman, who used his rifle and kicked the victim. The victim was not arrested and he identified the policeman by his family name, "Hernández", which

was written on his uniform. On the very day that the complaint was made, the magistrate ordered the necessary medical examination to be carried out in order to identify the injuries. The next day, three eyewitnesses were subpoenaed, who confirmed the facts of the complaint. Once the policeman was identified as Rufino Hernández Hernández, the magistrate immediately ordered that he be placed in pre-trial detention.

102. Obviously, the police are justified in using force in the performance of their duties, but the use of force must be subject to specific principles and rules which serve as legal restraints. What is at issue is the appropriateness of the means, the necessity of using them and proportionality in their use.

C. Right to security of person

1. Enforced or involuntary disappearances

103. During the 1980s, enforced or involuntary disappearances were a systematic practice in El Salvador. At the end of the decade, the practice was still very widespread in the country and continued to present disturbing features. In 1991, the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights recorded a total of 2,581 cases of disappearances which had reportedly occurred between 1980 and 1990. Of these cases, which were referred to the Government of El Salvador, the Group considered 2,207 to be pending. In 1991, 30 new cases were brought to the attention of the Government of El Salvador.

104. Since the signing of the peace agreements, the implementation of the agreements and the establishment of active verification by ONUSAL, the situation has changed considerably. Following the establishment of the Mission, when it was operating in the midst of the armed conflict, ONUSAL "received complaints which at first sight seemed to fall into the category of enforced or involuntary disappearances. However, almost all these complaints proved to be cases of illegal or arbitrary detention by units of the armed forces or of irregular military recruitment" (A/46/955-S/24375, annex, para. 25). When the cessation of the armed conflict went into effect, the situation began to show a marked improvement, which was duly reflected in the report quoted above. 8/ For his part, the Independent Expert for El Salvador of the Commission on Human Rights, Mr. Pedro Nikken, indicated in the report he submitted to the General Assembly at its forty-seventh session in pursuance of Commission on Human Rights resolution 1992/62 that he "did not encounter any new case of enforced or involuntary disappearance" (A/47/596, para. 69).

105. This positive trend was confirmed in the period between June 1992 and January 1993, covered by this report. During those eight months, eight complaints which had the hallmarks of possible enforced or involuntary disappearances were admitted (two in Santa Ana, two in San Vicente, two in San Miguel and two in Chalatenango).

106. Active verification established that the eight cases did not constitute disappearances. This means that during the period covered by the present report, no disappearances were recorded and the trends observed in the past 15 months show signs of becoming permanent. In addition, it can be stated that

there is no practice of enforced or involuntary disappearances in El Salvador at the present time. This is an unmistakable sign of a positive trend in the human rights situation, especially as regards the enforced or involuntary disappearnces which caused the international community such great concern in the past in connection with the situation in El Salvador.

2. Abductions

107. Since the Mission's establishment, 118 communications on abductions have been declared admissible. The number of complaints declared admissible has followed a sharp downward trend. Thus, between August and December 1991, 49 complaints were declared admissible, whereas in the longer period from June 1992 to January 1993, only 27 complaints were declared admissible.

108. During the period of the cessation of the armed conflict, there were frequent complaints attributing responsibility for abductions to FMLN. The Director of the ONUSAL Human Rights Division indicated in his fifth report that between August 1991 and May 1992 the Mission had received a total of 69 complaints of abductions attributed to FMLN. In one case submitted to the Mission on the day after its arrival in the country, FMLN acknowledged responsibility for the abduction of a well-known coffee grower and issued a public communiqué justifying abduction as a valid method for demanding payment of the war tax. The Mission rejected that practice - which had apparently been widespread in the past - and the justifications for it, and urged strict compliance with the commitments established in the San José Agreement (see A/46/955-S/24375, annex, para. 27).

109. As regards subsequent developments relating to the practice of abduction, the Division indicated that abductions had occurred "with some frequency in the Department of Usulután, especially against landowners and administrators, for the purpose of obtaining funds" (ibid., para. 28).

110. During the period covered by the present report, 27 complaints were received which, at first sight, could reasonably be described as unlawful deprivation of liberty committed for political reasons by individuals, groups or clandestine or unidentified organizations. Following verification of the communications declared admissible, 6 cases of abduction were confirmed, 11 complaints were dismissed, and the Mission is in the process of verifying the remaining 10, including 2 complaints received during January 1993.

111. Two cases verified by ONUSAL are that of Ismael Renderos Barrera (case No. ORSS 2010/92), who was abducted on 19 November 1992 by former FMLN combatants and subsequently released, and the collective abduction of José Darío Cortés Hernández, José Pompilio Cortés Hernández, Vladimir Mendoza and Douglas Amilcar Mendoza (case No. ORSV 761/92). As the verification of the latter case has established, on 23 September 1992 a group of about 20 combatants of the FMLN force Resistencia Nacional (RN), based at Santa Marta, Department of Cabañas, left their assembly point in Copinologa canton in order to carry out a series of abductions. Among these was the abduction of the two sets of brothers referred to above. Two of the men abducted had provided logistical support to FMLN in the past and one of them, Douglas A. Mendoza, was a combatant who had deserted. The RN commanders in the area indicated to ONUSAL that they had

seized the men and taken them to their camp because people living in the area had been complaining of assaults and robberies. They later said that they intended to hand the men over to a judge. In the end, the abducted men were released.

112. FMLN did not have the power or the legal authority to make the arrests, still less to take the victims to its camps and keep them there. FMLN infringed not only Salvadorian law but also the provisions of the San José Agreement.

113. The abduction of José Tomás Jurado by FMLN on 21 October 1992, from San Carlos Lempa, and that of Alfredo Ortiz Martínez, Benito Luna Martínez and Justo Ortiz Mestanza by FMLN officials on 19 July 1992, from Arambala, were also verified. All the individuals were released.

114. With the complete demobilization of FMLN and the establishment of peace on 15 December 1992, such acts became a practical impossibility, and no more complaints of abductions by members of FMLN have been received.

115. Some known cases of abduction are of greater political significance, since they are not occurring in circumstances connected with the end of the armed conflict. These are typical cases of abductions which indicate the existence of extremist groups that reject the democratic legal order and lawful political channels, opting instead for an extreme intolerance that translates into the violent practice of abduction. Though such cases are few in number, from the standpoint of human rights and the functioning of the political system, it is a matter of great concern that such practices are able to persist. If this trend is not halted through the effective use of institutional mechanisms for the prevention and punishment of crime, including the capacity of the judiciary to investigate crimes and bring the perpetrators to justice, there could be a numerical increase in abductions as a violent, unlawful and illegitimate practice, in anticipation of the upcoming electoral process in which general and municipal elections are scheduled to be held simultaneously in March 1994.

D. Right to liberty

116. The ultimate aim of the peace process which the Government of El Salvador and FMLN have been pursuing, with the participation of all the country's political forces through COPAZ, is the consolidation and proper functioning of democracy as a political system and form of social organization.

117. This requires an internal order in which human rights are respected. In maintaining this order, an important role is played by the effective and lawful exercise of the State's coercive powers through institutions entrusted with the tasks of ensuring adequate security for the population, combating crime and maintaining public order.

118. The constitutional reforms which were adopted at the beginning of the peace process as an expression of a national consensus provided the fundamental standards for regulating the relationship between public order and security, on the one hand, and the effective enjoyment of human rights, on the other. Thus, the Constitution, as amended, specifies that the armed forces have no powers with respect to public order and provides that responsibility in this sphere

rests exclusively with the new National Civil Police (PNC), which is in the process of being formed. The demilitarization of the State and society is a sine qua non for the full exercise of the right to liberty in a manner consistent with the need to maintain public order and security, in accordance with the constitutional legal order. In terms of legal standards, this is one of the most important contributions which the constitutional reforms made to the consolidation of democracy in El Salvador.

119. What needs to be done now is to give effect to constitutional norms. This requires that the National Civil Police be established quickly throughout the country and be given sufficient technical, material and financial resources to perform its functions effectively. Unfortunately, in the implementation of the peace agreements, this matter has not received the priority it deserves. This has contributed to the population's pervasive feeling of insecurity, not only on account of the extent of ordinary crime but also because, owing to the failure to ensure an appropriate transition from the former National Police to the new National Civil Police, the problems of arbitrary conduct on the part of the police which characterized the past continue to exist and are yet another factor contributing to the feeling of insecurity which is already beginning to wear down the population.

120. The fundamental objective of security under democracy and the rule of law, as specified in the Act organizing the National Civil Police itself, is to place the police at the service of the citizens, free from all political, ideological, socio-economic or discriminatory considerations or influences. The police must not view the citizens as a potential enemy. On the contrary, the police must see the citizens as the beneficiaries of the services whose efficient and responsible delivery is their own raison d'être. In this connection, article 1 of the Act organizing the National Civil Police provides that the basic functions of the police are to protect and safeguard the free exercise of the rights and freedoms of individuals; to prevent and combat all types of crimes; and to maintain internal peace, tranquillity, order and public security, adhering strictly to respect for human rights.

121. In the legislative area, the approach taken clearly reflects a shared determination to make democracy in El Salvador not just a functional political system but a way of life. But the practical obstacles to the application of legal norms are many and complex. Section II above contains a detailed discussion of this issue and of the dangers which exist with respect to the vital issue of public security.

122. The evaluation of active verification with respect to the right to liberty must be understood in this context. This means that the problems which exist, although they may not be a cause for alarm taken individually, are, when viewed as aspects of a broader situation, of crucial importance for the immediate future of the process of consolidating democracy in the country.

123. In this general context, arbitrary detention for political reasons has continued to occur, but more as an exception. A case in point is that of Pedro López Urbina (case No. SORC/554/92), who reported to Military Detachment No. 1 (DM-1) on 23 July to "join up" and was detained on the charge that he was an FMLN infiltrator. ONUSAL intervened and the victim was finally released.

124. The central problem involving violations of the right to liberty is arbitrary detention for so-called "petty misdemeanours" (faltas de policía). The situation is a serious one and has the hallmarks of a massive and systematic practice, although it does not necessarily reflect a deliberate policy on the part of the National Police and the Municipal Police.

125. In view of the magnitude of the problem, in November 1992 the Human Rights Division conducted simultaneous verification in 26 municipal and police jails (bartolinas) throughout the country. The verification confirmed that arbitrary detention for petty misdemeanours is the most important violation of the right to personal liberty.

126. For an entire week, unannounced visits were made, at night as well as during the day. Records were checked for the entry of all individuals detained in the jails, the date of detention, the reason for detention and the length of the detainee's stay in the jail.

127. In this way, it was possible to identify a number of irregularities, particularly in the administrative classification of misdemeanours; different penalties for the same misdemeanour; the complete absence of any procedure fully guaranteeing the rights of detainees; the violation of the right to communicate with one's family; and the impossibility of exercising the right to legal counsel.

128. Police even classify some offences such as robbery and burglary as administrative misdemeanours. At the same time, they invent non-existent misdemeanours such as being a "known thief". Individuals detained for burglary and robbery are not brought before the competent judges according to the proper procedures. The Municipal Police simply impose the administrative penalty of 15 days' detention and then release them. This obviously adds to the public's feeling of insecurity.

129. In San Salvador and Santa Ana alone, in three months, 10,728 individuals were detained, making an average of 3,500 detentions per month. Extrapolating from these figures, the number of detainees per month nationwide is on the order of 5,000. The massive nature of this practice is obvious: the number of persons detained in 30 days is comparable to the country's total jail population.

130. It must be pointed out that most cases of such detention involve arbitrary decisions depriving citizens of the minimum guarantees afforded by the Constitution of the Republic and the domestic legal order. To this must be added the problem of the non-existence of the right to judicial review in such cases, owing to the ineffectiveness of the remedy of habeas corpus and the impossibility of lodging an appeal with the relevant court.

131. From the standpoint of due process, the principles of legality and juridical security are violated in the majority of cases as are such minimum procedural guarantees as the right to legal counsel, the right to trial by a competent, impartial and independent judge or court, and the right to challenge the judgement. Detention for petty misdemeanours is characterized by the absence of any trial prior to punishment. The safeguards prescribed in the Police Act and the Municipal Code are not applied, still less the provisions of

Decree No. 457 of 21 March 1990, "Act governing the procedure for administrative detention or the imposition of administrative fines". As a rule, penalties are applied automatically, without any evidence being presented, without any hearing being conducted, without granting the detainee the right to legal counsel and without the judgement being reflected in a formal judicial decision. Nationwide, 67 per cent of detainees assert that they were not allowed to communicate with family members and only 2 per cent of authorities read detainees their rights.

132. Various factors are involved in the problem of arbitrary detention for petty misdemeanours, some of them relating to legal provisions which are in need of amendment so as to bring them into line with the provisions of the Constitution, and others relating to existing practices and procedures, the level of education and training of police officers and judges and, lastly, the administrative organization in the jails.

133. This alarming situation is also the result of ambiguity and lack of precision in the drafting of secondary legislation, which has still to be brought into line with the provisions of the Constitution, and the absence of a political will to enforce existing laws.

134. Article 14 of the Constitution provides that the judiciary is the only organ with the power to impose penalties. Nevertheless, by decision or ruling after a trial, the administrative authorities may punish infractions of laws, regulations or ordinances by up to 15 days' of detention or by a fine, for which an equivalent period of detention may be substituted.

135. The provision establishes the power of the administrative authorities to impose penalties, but clearly only after the trial has been held. This guarantee that punishment must follow a trial is the only means of ensuring the punishment is legal.

136. In line with the above constitutional provision, Decree No. 457 provides that penalties may be imposed only on the basis of a pre-existing law, regulation or ordinance establishing a specific procedure and guaranteeing the rights of the alleged culprit to a hearing and to legal counsel. In the absence of such specific laws, the provisions of Decree No. 457, which contains a simple and expeditious procedure, shall apply. The Police Act currently in force contains inappropriate, obsolete provisions (it dates back to 21 July 1886) and should be repealed since it is incompatible with the Constitution.

137. In practice, the National Police and the Municipal Police are governed by the 1886 Police Act, do not follow procedure established in Decree No. 457 and make arrests, identify misdemeanours and in some cases decide on penalties without any legal basis, in contravention of the country's legal order, including the police law now on the books, and in violation of the rights of detainees.

138. With the aim of helping to find immediate, urgent solutions to this delicate situation, the Human Rights Division has made specific recommendations to the National Police. The latter has accepted them and begun a process of analysing the problem and identifying corrective measures. Agreement has also

been reached with Municipal Police authorities on applying criteria designed to eliminate the main defects, pending the adoption of substantive decisions.

E. Right to freedom of association and effective enjoyment of trade union rights

139. The San José Agreement listed, among the commitments entered into by the parties and subject to verification by ONUSAL, the granting of full guarantees for "the right of all persons to associate freely with others for ideological, religious, political, economic, labour, social, cultural, sporting or other purposes" (A/44/971-S/21541, annex, para. 5). It also stipulated that trade union freedom shall be fully respected, and recognized the necessity of guaranteeing the effective enjoyment of trade union rights.

140. In El Salvador, the exercise of trade union freedom continues to be restricted. In addition, Salvadorian secondary legislation is seriously deficient as regards the legal regulation of trade union freedom, despite the fact that article 47 of the Constitution does protect it adequately in terms essentially consistent with the provisions of ILO Conventions Nos. 87 and 98.

141. The current Labour Code does not reflect either the letter or the spirit of article 47 of the Constitution. Article 219 of the Code provides that administrative authorization shall be required before trade unions can be recognized, and article 230 confers upon the competent authority of the Ministry of Labour the power to impose penalties ranging from fines to dissolution of the union for a series of reasons which have the practical effect of limiting and possibly nullifying the right to trade union freedom. That is tantamount to undue interference by government authorities and, ultimately, by political parties in setting the limits for the exercise of trade union freedom, interference that goes so far as to affect the applicability of labour contracts and collective bargaining agreements, since they also have to be registered with the administrative authorities. This legal arrangement removes the legality of labour relations from the jurisdiction of the courts and makes it contingent on the exercise of political power through the administrative authorities. Consequently, it is contrary to the provisions of ILO Convention No. 87.

142. Verification of the effective enjoyment of trade union rights also discloses that there is a wide gap between the rights recognized by the Constitution and ordinary laws. Trade union freedom is constantly being violated, raising questions also about the effectiveness of the legal norms governing individual labour rights. In essence, this situation is attributable to the marked incompetence of the administrative authorities (Ministry of Labour) and the courts of justice and to the inadequacy or non-existence of procedural norms establishing workable technical and juridical mechanisms for the effective enforcement of substantive laws.

143. During the period covered by this report, complaints of violations of trade union freedom and infringement of trade union rights steadily increased. Verification corroborates the existence of violations in the vast majority of cases. Among the cases most representative of the prevailing situation are the refusal to legalize sections of the Sindicato de Trabajadores Bancarios e Instituciones Financieras (SITRABIF) (Fondo de Financiamiento y Garantía de la

Pequeña Empresa) and the Sindicato de la Industria Portuaria de El Salvador (La Paz Department), the elimination of the union section of BLOKITUBOS, S.A., and of the Sindicato de Trabajadores de Cemento, Arcilla y Similares (STPCAS), the dissolution of the Sindicato de la Empresa Industria de Productos Alimenticios Lácteos y Conexas (SIPALAC) and the refusal to legalize the departmental branch of the Unión del Sindicato de la Industria Portuaria de El Salvador (SIPES).

144. It was also found that recognition of the legal personality of non-governmental organizations, associations, trade unions and communities is routinely delayed or indefinitely postponed. With a view to obtaining comprehensive data indicating the practical impact of the policies being implemented by the administrative authorities on the exercise of trade union freedom and the enjoyment of trade union rights, the Human Rights Division, which is in contact with the Minister of Labour, requested precise information on the number of applications for legal recognition processed from August 1991 to January 1993, the number of trade unions recognized during that period, the number of applications for registration of union branches and sections processed during the same period, the number of recognitions or registrations contested by employers and the number of cases in which the Ministry of Labour upheld the action of employers in contesting recognition or registration.

145. As regards international law, it is noteworthy that the Government of El Salvador has ratified only 6 of the 171 ILO Conventions. Those that the Government has not ratified include some of the most important and meaningful conventions such as Conventions Nos. 87 and 98 on trade union freedom.

146. At the time of final drafting of this report, and after a month of negotiations in the Forum for Economic and Social Consultation, a body dedicated to dialogue and understanding established by the peace agreements, representatives of labour, management and the Government signed at San Salvador on 17 February 1992 an important Agreement of Principles and Commitments.

147. This Agreement is based on the conviction, shared by workers and the State that worker-management relations, and therefore the new labour legal framework, should eventually become a contract for social peace and economic development which will bring the factors of production into harmony, with the object of creating the reliable, secure environment that is the necessary basis for encouraging business, both national and foreign, to invest in the country, thereby creating jobs and helping to combat unemployment and poverty.

148. This Agreement is important not only because it represents a practical, positive step towards implementing the peace agreements in the economic and social sphere but also because it sets forth a series of obligations assumed by the parties, and especially by the Government, which, if fulfilled, should bring about a substantial improvement in the exercise of trade union freedom and the effective enjoyment of trade union rights.

149. Among the obligations it imposes are the following: to facilitate recognition of the legal personality of trade unions; to reconsider cases of denial of registration for trade unions, general executive boards, branches and sections; and to recognize the legal personality of associations of State and municipal workers which have applied for that status and that of associations of

agricultural workers and cooperatives. Furthermore, private sector employers and the Government in its capacity as an employer shall refrain from practising discrimination against workers on grounds of their trade union affiliation. Lastly, the parties, beginning in March, will begin a process of evaluation with a view to ratifying the ILO conventions on trade union freedom and democracy.

150. In order to give effect to those commitments by mutual agreement and - in what constitutes a clear and well-defined option - by consultation, a tripartite commission has been established consisting of representatives of the State, workers and management. The commission, so long as there is no new labour legislation, will be responsible for verifying compliance with the obligations stipulated in the agreement and for working with the Ministry of Labour and Social Welfare in seeking solutions to labour disputes.

151. This represents a notable advance in the process of consultation called for in the peace agreements and, judging from its provisions, is both a welcome recognition of the blatant deficiencies in the existing legal order and of the serious restrictions on the exercise of trade union freedom, and a commitment to establishing a new legal order for labour relations that is consistent with international norms and to eliminating practices that infringe and violate the right of association, trade union freedom and the effective enjoyment of trade union rights.

F. Right to due process of law

152. The poor performance of the judiciary in the administration of justice was a constant in the evaluation of the human rights situation in El Salvador in the five reports previously submitted by the Human Rights Division. That situation has also been described in the resolutions adopted by the Commission on Human Rights and the General Assembly over the past 10 years.

153. The constitutional reforms have certainly improved the basic normative environment for the administration of justice in El Salvador, but the persistence and recurrence of problems point to the urgent need for a structural and functional reform of the judiciary.

154. On previous occasions, ONUSAL has emphasized that the persistence of that situation is reflected, inter alia, in the failure of the State to comply with its duty of guaranteeing rights, in its guilt by omission in a whole series of human rights violations and in the systematic recurrence of violations of the right to due process of law. The obligations of the State to protect human rights presuppose, on the one hand, that State authorities are bound to refrain from committing violations, and on the other, that the State should fulfil its duty of guaranteeing the protection of human rights.

155. This duty to provide guarantees is not reflected in the functioning of the judiciary in El Salvador. That situation is clearly attributable to structural defects in the administration of justice, but in many cases and despite repeated warnings by ONUSAL, the fact is that many judges lack a juridical awareness of this duty to provide guarantees or, what is more serious, that they are aware of it but are not complying, which implicates them even more deeply.

1. Extrajudicial confession

156. The Salvadorian legal order admits extrajudicial confession as evidence. However, the Constitution provides that statements obtained against the will of the individual shall be invalid and that whosoever shall obtain them in that manner and use them shall be criminally liable (art. 12, para. 3). Moreover, this provision is fully in accord with the American Convention on Human Rights, which provides that "a confession of guilt by the accused shall be valid only if it is made without coercion of any kind". 4/

157. The practice with regard to the procedures for obtaining extrajudicial confessions is seriously flawed, not only because there are no specific technical criteria for applying them properly but also because they are being abused.

158. In response to that situation, there is a growing trend of opinion in the country towards invalidating that police procedure, a trend which has become apparent even in government departments, especially the Ministry of Justice, which is promoting legislative reforms in criminal and court procedures.

159. That would undoubtedly mean definite progress in the protection of the rights and guarantees of detainees and would eliminate serious abuses of power. To this end, it would be advisable to expedite the legislative reforms aimed at invalidating extrajudicial confession as evidence. Moreover, active verification of enjoyment of the right to due process of law indicates that not only is the probative resource of extrajudicial confession being used arbitrarily, but in many cases confessions are being obtained illegally through coercion and ill-treatment.

160. ONUSAL was able to corroborate these facts on many occasions. The case of Adolfo Aguilar Payés (case No. ORSA/1119/92) is an example of extrajudicial confession obtained illegally by coercion. E. Chacón and G. Payés were murdered during the first half of 1989. They were both considered to be founders of the paramilitary group Defensa Militar Patriótica. On 23 July of that year, a student from the National University, Adolfo Aguilar Payés, was arrested by members of the Treasury Police. On 25 July, he made an extrajudicial confession. When he was brought before the San Salvador Sixth Criminal Court, the accused said that he had been beaten and threatened with death while being held by the Treasury Police. In those circumstances, he said, he was forced to sign a previously prepared incriminatory statement which he was not permitted to read. That self-incrimination was the main evidence against Aguilar Payés during the trial.

161. It should be pointed out that, according to article 496 of the Code of Criminal Procedure, extrajudicial confession can have no probative value unless it has been confirmed by two reliable witnesses. Confirmation by witnesses as required by law was never adduced against the accused. The attorney handling the case asked that it be dismissed for lack of evidence. The court denied his request. The attorney was subsequently relieved of his post. The public hearing of the case was repeatedly postponed. In November 1992, the accused went on a hunger strike, demanding that the public hearing be held. Finally, the public hearing set by the Sixth Criminal Court was held on 2 December. The

jury unanimously acquitted the accused after he had spent three years and four months in prison.

162. The case, which acquired public notoriety, is representative of the abuse and illegal use of extrajudicial confession. The judiciary deprived Aguilar Payés of his liberty solely on the grounds of a statement that was: (a) extrajudicial; (b) obtained by the use of force and (c) not even substantiated as required by the country's internal legal order. In this and other similar cases, it is essential to enact more precise legislation in order to provide victims with the proper judicial instruments for suing the State for damages, particularly when they have been unjustly convicted through judicial error. 5/

2. Right to legal counsel

163. The right to legal counsel is a basic guarantee of due process of law. As in most developing societies, there are in El Salvador structural economic and social factors that seriously restrict the enjoyment of the right to legal counsel. Among them is the fact that a large proportion of the population cannot afford the costs of a proper defence. Consequently, the right to legal counsel in the form of the institution of the public defender is especially important in El Salvador. It fulfils two interrelated conditions: on the one hand, it gives practical effect to the right of the accused to assigned counsel and, on the other, it ensures that such counsel is competent to defend him.

164. The Constitution guarantees that detainees shall be assisted by legal counsel throughout the proceedings of auxiliary organs of the administration of justice and during trial (art. 12). The Legal Aid and Public Defenders Act adopted in the course of the implementation of the peace agreements recognizes the right of the accused to legal counsel as soon as extrajudicial proceedings are instituted, either through a defence lawyer of his own choosing or a public defender appointed to act on his behalf. The public defender is appointed by the Chief State Counsel with the object of guaranteeing all citizens due process of law. The Act is a definite improvement over the pre-existing legislation. It is also important to note that the amendments to the Code of Criminal Procedure, to the Act organizing the Public Prosecutor's Office and to the Penal Code came into force in August 1992. These amendments strengthen the protection of the rights of the accused, particularly in relation to the exercise of legal defence by public defenders and officially appointed and private lawyers and to the right to legal assistance. Another merit of the amendments now in force is that they establish proper penalties for judicial officials, administrative officials of the judiciary and members of auxiliary organs who fail to observe the rights granted the accused by law.

165. Active verification by ONUSAL indicates that, in practice, these legal standards are not being met or are not being fully enforced. In most cases, the accused have no access to an immediate, timely and competent defence. In the interior of the country, there are clear signs of systematic violations of the right to legal counsel, particularly in rural areas, where in most areas under the jurisdiction of magistrates' courts there are no private lawyers or institutions capable of taking on the defence of victims, quite apart from the latter's inability to pay the corresponding costs. There are few instances

where the State assumes the defence of the accused and in most of those cases the defence is incompetent.

166. In the circumstances, it is more or less usual that in the absence of legal counsel during the preliminary basic proceedings for establishing the evidence, there are definite irregularities and violations of due process. The case of Gladys Elizabeth Lemus (case No. SORC/594/92) is representative. On 25 September 1992, she received a summons issued by the Court of First Instance of Chalatenango, ordering her to appear in criminal court on charges of having committed assault. ONUSAL, having verified the judicial record in question, established that the judge had ordered the detention of the alleged offender before having received her statement. In the absence of any incriminating evidence, the ONUSAL Subregional Office in Chalatenango asked the public attorney attached to the court to take on the defence of the accused. The public defender for criminal cases assigned to the Department of Chalatenango behaved irregularly by repeatedly refusing to take the case. The ONUSAL Subregional Office therefore made an ad hoc approach to the assistant public attorney attached to the court who, after confirming that the case had been refused by the public defender, immediately sent another public defender, who performed his duty and prevented the accused from being arbitrarily detained.

167. In many cases, there is simply no defence. This deficiency is rooted in the structural problems of the judiciary. The Public Defenders Department has only 108 defenders for the whole country, whereas there are 305 magistrates' courts, which means that there is not even one public defender per magistrates' court. 6/

168. The State is systematically failing to comply with its legal obligation to investigate all violations, which makes it guilty by omission. Testimony continues to be given priority over technical evidence. In particular, in the investigation of deaths, autopsies, ballistic tests, photographs and fingerprints are almost never used and evidence of the crime is rarely preserved. The Office of the Attorney-General does not intervene in most cases and when it does, it always does so late and without adding anything material to the investigation.

169. When the perpetrators belong to the armed forces or the police or are economically, socially or politically powerful, the judiciary does not attempt to identify them for purposes of the trial. That continues to be true, despite recommendations to the contrary repeatedly made by ONUSAL. All this points to a situation in which the right of victims to prompt and effective reparation and compensation for the injury sustained is being infringed.

3. Right to be tried by a competent tribunal within a reasonable period of time

170. The problem of delays in the administration of justice is endemic in El Salvador and seriously affects the application of due process of law. As a general rule, the guidelines contained in article 123 of the Code of Criminal Procedure concerning maximum time-limits for pre-trial proceedings and for the rendering of a judgement are ignored. Most prisoners spend a number of years waiting for a final judicial decision.

171. The large number of unconvicted prisoners is, unfortunately, a constant among countries of the region, including El Salvador. 7/ The fact that pre-trial detention frequently amounts to the advance service of a sentence, owing to delays in the administration of justice, the huge caseload of the criminal courts and other factors have been protested, and various proposals have been made for combating the prolongation of pre-trial detention.

172. According to the data given by the Division in appendix I to the fourth report of the Director of the ONUSAL Human Rights Division (A/46/935-S/24066, annex), there were 5,286 prisoners in penal institutions as of 6 March 1992, of whom 531 had been convicted (522 men and 9 women) and 4,755 were awaiting sentence (4,497 men and 258 women). Most of them were serving time in the Central Prison and, to a lesser extent, in the Eastern and Western Regional Prisons and other penal institutions.

173. The Emergency Act to Solve the Problem of Unconvicted Prisoners (effective for one year as from 29 May 1991) was an effort to deal with precisely that problem. The Act temporarily regulated the release of all prisoners awaiting trial who had been in prison for periods exceeding the legal time-limits for pre-trial detention. After exempting some offences from the effects of the Act, it identified three categories of possible release: the first applied to prisoners awaiting trial for offences punishable by a prison term of more than five but not more than eight years; the second, to those awaiting trial for offences punishable by more than three and not more than five years in prison; and the third, to those awaiting trial for offences punishable by a prison term of not more than three years or by the imposition of a fine. In application of this Act, 448 persons had been released by June 1992, representing less than 10 per cent of the total prison population. The measure did not produce the desired effects (see A/46/935-S/24066, annex, para. 34).

174. Since the third category for release was to apply to those whose offence was punishable by not more than three years in prison or by the imposition of a fine, and since nearly all offences of any significance fall outside that category, it was difficult to implement the Act. For example, robbery (art. 237 of the Penal Code), which involves taking possession of a movable object worth more than 20 colones, is punishable by one to five years in prison and is one of the acts proscribed by law most frequently committed. These factors made it difficult for the Act to become fully operational. In addition, the list of offences where no release is permitted would have to be reviewed and the requirements in the three categories of release provided under the Act would have to be tightened.

175. Another reason why there were difficulties in enforcing the Act was that the requirements for release, including those specified in the third category (apparently the easiest and quickest), established various conditions such as proof that the detainee had never been convicted of an offence and that his good conduct (art. 10 in fine was attested to by a certificate issued by the Department of Penal and Rehabilitation Centres and in the report of the head of his penal centre.

176. Actually, a temporary expedient like the Emergency Act could not be expected to settle the problem of unconvicted prisoners because it was a short-term measure. The problem presented by the existence of those prisoners reflects an unfortunate situation in which the Salvadorian criminal justice system has reversed the order of its functions by activating the actual judging of the accused at the pre-trial stage. That means that the problem is structural and is inherent in the criminal justice system; it calls for more drastic measures to be taken to reform that system, as suggested below.

177. The Division has recommended that due weight be given to the criteria listed in the final document of the research programme of the Inter-American Institute of Human Rights on penal systems and human rights in Latin America and that a legal norm should be adopted establishing automatic release based on those criteria (ibid., para. 52). The document states that any pre-trial detention that lasts for more than two years without the accused or his legal counsel having arbitrarily impeded the progress of the case should be considered a violation of human rights and should not be permitted. It suggests that preventive or pre-trial imprisonment or detention should not exceed four months, save if the accused or his defence counsel have arbitrarily impeded the progress of the proceedings. It also proposes that pre-trial detention should not be for the maximum term when it is equivalent to more than half the prison term that the accused would serve if he were convicted (ibid., para. 37).

178. The temporary law is no longer in effect and the serious problem of unconvicted prisoners persists. Accordingly, prompt action must be taken to include in the Code of Criminal Procedure rules that limit the time spent in pre-trial detention and to establish a system of automatic release subject to no condition other than the completion of certain time periods, without detriment to measures to prevent abusive conduct by detainees, their legal counsel or third parties that would result in the prolongation of the period of detention. The Code should also include explicit rules for computing the amount of time the accused has spent in detention, to be deducted from the time prescribed in the sentence ensuring that the time scales reflect the realities in El Salvador. 8/

179. Other measures related to the administrative part of the penal system might be tried out, such as the institution of a register showing the time spent in detention by persons awaiting trial, which would be supervised by the Office of the National Counsel for the Defence of Human Rights, and of periodic prison inspections to verify that information.

4. Right to a fair trial

180. The right to be tried by a competent, independent and impartial tribunal is a basic judicial guarantee envisaged by the Universal Declaration of Human

Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights.

181. The independence of the judiciary is an essential ingredient of that guarantee, in that it refers to the need for judicial proceedings conducted independently of the other powers of the State, especially the need to avoid undue interference by the executive branch. To require that guarantee is particularly crucial in judicial practice in El Salvador because there is no tradition of autonomy in the conduct of the judiciary. In the detailed analysis of the administration of justice, attention has repeatedly been drawn to the politicization of the judiciary as one of the anomalies affecting its capacity to administer justice. 9/

182. ONUSAL verification over the period covered by this report corroborates the fact that, as pointed out in previous reports of the Human Rights Division, regardless of any progress that may be made in the legislative sphere or in the legal regulation of proceedings, judicial practice constantly violates the right to be tried by a competent, independent and impartial tribunal. Some representative cases indicate how serious that situation is.

183. In August 1992, the Santa Ana Regional Office heard about an irregular detention in Tacuba and presented itself at the Tacuba magistrate's court. An examination of the court record disclosed serious irregularities. On 1 August, the magistrate had ordered the detention of Víctor Mendoza (case No. ORSA/937/92) on a charge of robbery, the victim being Wilfredo Armando Molina Galicia. There had been no proceedings prior to the order to arrest Mr. Mendoza, nor had there been any charge or ruling to justify his detention. No further reference was made to the alleged robbery, nor to the date it occurred, nor to the corpus delicti. On 25 November, the Customs Police, which had arrested the accused on the basis of an order from the magistrate, proceeded to bring him into court. On 27 November, statements were taken from the alleged victim and a witness, who declared that on the previous day, that is, on 26 November, the accused had assaulted Molina Galicia. On 27 November, the accused's defence counsel asked that he be released. The court ordered his release without taking any judicial action.

184. The rationale for the action by the Tacuba magistrate was that the assault allegedly committed by Víctor Mendoza López had occurred while the accused was in custody, a deprivation of liberty that the same magistrate had ordered three months before the alleged crime was committed.

185. When ONUSAL consulted the magistrate as to the reasons for this strange procedure, and for the absence of any judicial decision justifying detention, he could not furnish a coherent reply. All the elements of the case combine to indicate an extreme instance of flagrant violation of the right to trial by a competent and impartial tribunal, for which the magistrate bears criminal responsibility.

186. On 7 December 1992, the father of Walter Miguel Fajardo Peñate (case No. ORSA/939/92) charged that his son had been shot in the right leg by five or six persons unknown. The shooting had occurred on 28 November. When the case was brought before the First Criminal Court of Santa Ana, it was found that four suspects had been arrested by the National Police for aggravated assault on

other people in similar circumstances and by the same means. The National Police confiscated the car belonging to the suspects and found inside a 9-mm pistol, two chambers and six cartridges. The court failed to carry out the necessary proceedings to establish the facts despite a written request to do so from the defence lawyer. On the other hand, it notified the next of kin of the suspected perpetrators in writing that they were being detained. The victim said that he could recognize the people who had shot him and supplied the licence number of the car from which he had been shot, which matched that of the car confiscated from the suspects. Yet, on 4 December, the court ruled on the legal status of the accused by declaring that guilt could not be established because the accused had denied the charges and the plaintiffs had brought forward no witnesses, adding that the victim, in his statement, had said that he could recognize the accused, but that owing to his state of health and the provisions of article 235 of the Code of Criminal Procedure, that fact could not be formally confirmed. Accordingly, the court ordered the immediate release of the suspects. The judge's action is a blatant violation of the right to trial by an independent and impartial tribunal and is indicative of judicial decisions which are not founded on legal considerations but on pressures of another kind.

G. Right to freedom of expression

187. During the period under study, the enjoyment of freedom of expression was in effect as a general norm. The Constitution fully guarantees it and the State respects it. Only four isolated complaints were received in the period between June and December 1992. In January 1993, no complaints were received. Verification is aimed at seeing that there has been no violation in practice. However, at times, the media were used for such unlawful acts as making death threats.

188. Similarly, in relation to the provisions of the new Electoral Code, some media indicated that they were concerned about certain regulations which, in their view, affected the full enjoyment of the right to freedom of expression. The President of the Republic submitted to the Legislative Assembly a package of proposals designed to tighten the wording of the legal provisions in order fully to protect freedom of expression. However, the Assembly did not agree to the President's proposal concerning the provision on electoral opinion polls. That proposal was in keeping with legal logic and designed to guarantee freedom of expression; it would have reduced the period for conducting opinion polls and projecting the results of elections to three days before and after the voting. The Assembly, in rejecting the President's proposal, maintained the rule that prohibits polling for a long period during the electoral process, which obviously would impose certain restrictions on freedom of expression. At the time of drafting of this report, the Assembly was considering amendments to the Electoral Code which would remove that limitation.

H. Political rights and right to documentation

189. The ultimate objective of all the peace agreements is the restructuring of the State apparatus with a view to consolidating a modern State that is governed by the rule of law and guarantees the enjoyment of human rights, in which full

democracy can flourish. That also connotes the full exercise of political rights without restrictions and in conformity with the Constitution.

190. The armed conflict itself was a limitation on the exercise of democracy. Political rights and their effective enjoyment in practice require a social environment in which there is a declared consensus in favour of democratic practices. That is one of the positive consequences of the ending of the armed conflict. The incorporation of FMLN into the democratic constitutional political structure, beginning with its conversion into a political party, represents a decisive step towards the enjoyment of full political rights in El Salvador.

191. Against that background, the presidential and municipal elections scheduled for March 1994, which will take place simultaneously for the first time in 15 years, will be a significant advance in the consolidation of a democratic political system with no restrictions on the exercise of political rights. The elections will be governed by the new Electoral Code prepared in compliance with the Peace Agreement, which was adopted by agreement of all the political parties represented in the Legislative Assembly on 8 January 1993.

192. In the course of active verification, no significant violations of political rights were identified; as a general rule, those rights are guaranteed by the State. In some cases, there have been reports of minor restrictions or harassment of the party or social organizations of FMLN, primarily in former conflict zones. These are attributable to unilateral decisions by certain intermediate authorities which, once the facts are made clear, do not persist in their initial attitudes. In any case, they appear to be factors inherent in the transition of FMLN to a legal, democratic party structure.

I. International humanitarian law

193. Since the cessation of the armed conflict began, the number of violations of international humanitarian law has steadily declined. In the final months of 1992, they were confined to sporadic complaints by one or other of the parties. With the formal ending of the armed conflict on 15 December 1992, the situation of internal conflict which required that the contending parties comply with the norms of international humanitarian law ceased to exist.

194. As a result, the actual physical circumstances which gave rise to violations of international humanitarian law and violations of human rights arising from the hostilities have ceased to exist. Throughout the process of verifying compliance with the norms of international humanitarian law, the ONUSAL Human Rights Division found that the parties scrupulously respected the cease-fire, which accounted for the steady decline in violations. In the period between June and 15 December 1992, the date on which the war was formally ended, the Human Rights Division processed 21 complaints of violations of international humanitarian law.

195. An overall evaluation of the impact of the peace agreements on the enjoyment of human rights in conflict zones and of respect for the norms of humanitarian law applicable to combatants indicates that the enforcement of the peace agreements since the beginning of the cease-fire drastically changed

living conditions in conflict zones and gradually eliminated violations arising from the conflict itself. That obviously helped create a climate of peace and detente which, in turn, was decisive in improving the enjoyment of certain human rights.

J. The situation of violence and the enjoyment of human rights

196. As pointed out earlier, the situation in El Salvador today is one in which the end of the war coincides with a feeling of insecurity among the population because of the waive of ordinary crime.

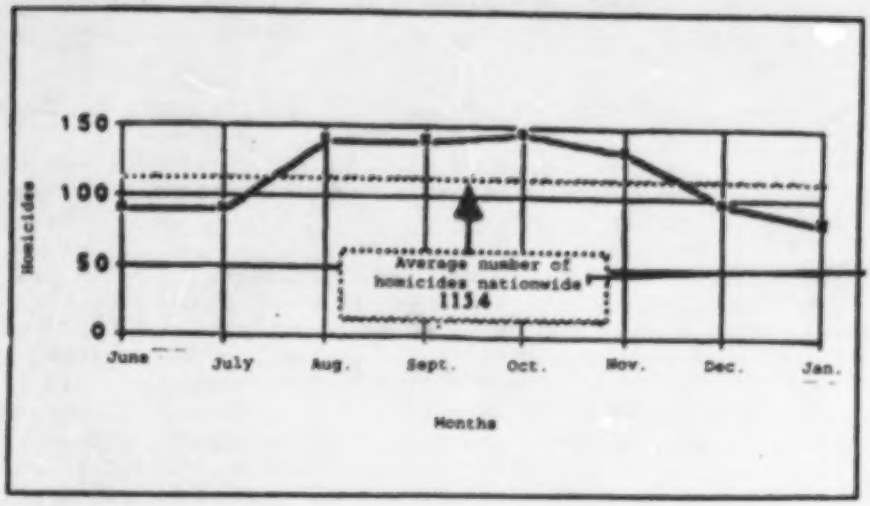
197. The situation of violence is relevant to the evolution of human rights, in that it has an impact on the social environment in which those rights must be exercised and may become a front behind which serious violations of human rights, such as political murders masquerade as ordinary crimes. When resistance to violent crime is expressed by individuals taking the law into their own hands and "private justice" becomes a growing trend, it can generate a kind of informal, unlawful administration of justice that fosters conditions for the use of violence leading to a recrudescence of human rights violations. At the same time, a situation of violence expressed in crimes directed mainly against the integrity of the person may activate latent tendencies to carry out politically motivated acts of "private justice".

198. All those factors add to the complexity of active verification of the enjoyment of human rights or violations thereof. An increase in homicides and attacks on the integrity of the person with criminal intent, using organized methods in committing the crime, may sometimes be indistinguishable from acts which were typical of the death squads in the past.

199. Nevertheless, as has already been pointed out, excessive violence may prompt anti-crime measures that are not necessarily compatible with the provisions of the peace agreements and may be at variance with a system of crime control in which human rights are respected.

200. All this shows the need to be very careful when speaking of trends in ordinary violence and their interrelationship with the human rights situation. ONUSAL carried out a survey of ordinary crimes against life committed in the period covered by this report, i.e., from June 1992 to January 1993. The following table shows the trends from month to month, and how the monthly figures compare with the overall average for the sample period.

Total number of homicides in El Salvador
between June 1992 and January 1993



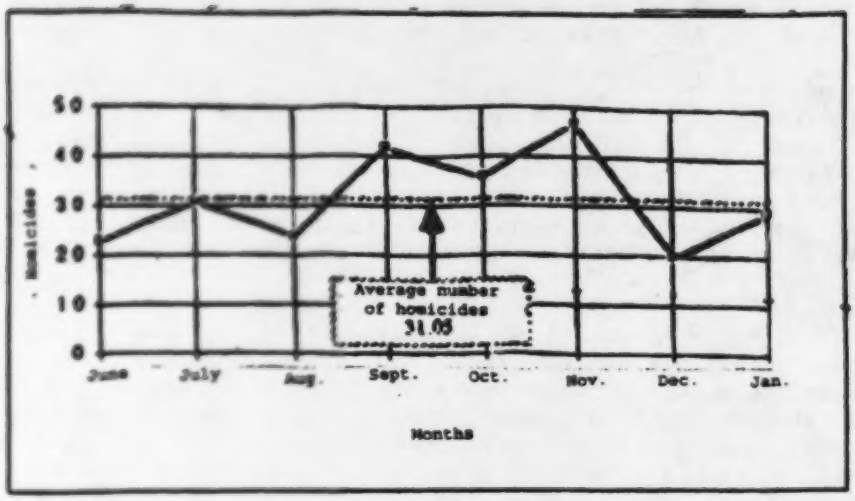
201. If we look at the table, we see that there was an increase in homicides between July and November 1992. That phase corresponds to the final segment of the period of armed peace and the negotiation of the final segments of the agreements related to the final cessation of the armed conflict.

202. Nonetheless, the most important aspect of the statistical sample is the decline in homicides which begins in the month of November 1992. It is important to emphasize that the homicide level recorded in January 1993 is the lowest in the whole of the period analysed.

203. If we look at the situation in San Salvador, the capital of the Republic and the largest urban centre, the trends are more cyclical and pronounced than in the nation as a whole; the number of homicides averages out at 31.05 homicides a month, one per day.

204. In the next table, which shows the homicide curve in San Salvador, it is clear that between mid-August and the end of November 1992, the increase in the homicide rate is proportionately higher than in the nation as a whole, whereas in December it declines and then rises again in January.

San Salvador: total number of homicides between June 1992 and January 1993



205. If we take into account that crimes against life have the greatest potential to generate insecurity in the population, the results of the statistical sample are exceptionally important, since they show that the wave of violence is not as great as the media present it and the public perceive it to be. On the contrary, we do not see a dramatic increase in this very disturbing and costly type of violence. This certainly does not rule out the possibility that, in a post-war context, we may later see an increase in crime indicators. The demobilization of FMLN and members of the armed forces and the disbanding of the security forces may themselves leave potential perpetrators of criminal acts without any lawful means of survival in the short term.

206. However, with the end of the armed conflict, there does appear to be a natural focusing of national concern on ordinary violence. This calls for a swift solution, and that is a legitimate aspiration of the Salvadorian people. However, we must guard against "inflating" the situation of violence, since an over-exaggerated perception may lead to security policies that might distort the implementation of the peace agreements and the consolidation of the rule of law.

207. In order to ensure the enjoyment of human rights and greater security in overseeing the legality of respect for human rights and their exercise, it is essential to reduce ordinary violence to normally acceptable levels. Uncontrolled violence is prejudicial to the promotion and protection of human rights; however, exaggerating the magnitude of the problem and promoting emergency measures which, by nature, may be used to undermine the rule of law and bring about a resurgence of selective political violence may also be prejudicial.

V. ACTIVE VERIFICATION OF OTHER COMMITMENTS COMPONENTS, AND INSTITUTIONAL SUPPORT IN THE PEACE AGREEMENTS WHICH HAVE HUMAN RIGHTS

A. Functioning of the judiciary and the administration of justice

208. Reference has been made on a number of occasions, both in this report and in previous reports prepared by this Division, to the unsatisfactory functioning of the judiciary and of the administration of justice in general. The large number of complaints of violations of the right to due process and the finding, upon verification, that the vast majority of them are justified, is a measure of the severity of the problem posed by the administration of justice as a structural limitation on the real and effective exercise of human rights in El Salvador.

209. The constitutional reforms and the progress made in the area of secondary legislation are not having a similar impact on judicial practice. The non-fulfilment of the duty to provide guarantees; the slow pace of justice; the negligence of certain judicial officials; the failure to respect the right to legal counsel; the large number of unconvicted prisoners; the lack of forensic impartiality; the difficulties and obstacles encountered in the effective investigation of crimes; the persistence of obsolete administrative and trial structures; the lack of technical training of members of the judiciary, especially magistrates; the ineffectiveness of constitutional justice (particularly of habeas corpus); the absence of proper resources for speedy and effective justice; the lack of independence and autonomy with which the judiciary acts; and the continuing clear signs of corruption in many cases all indicate that a radical reform of the judiciary is urgently needed.

210. The President of the Supreme Court of Justice himself stated as much, pointing to the existence of corruption in the judiciary and announcing that the Court's professional investigation section will undertake an investigation with a view to severely punishing corrupt officials. 10/ This demonstration of a determination to rectify matters should, however, be part of an overall policy for the functional restructuring of the administration of justice.

211. At the time of drafting of this report, the Supreme Court removed the second magistrate of Santa Rosa de Lima because there was a warrant out for his arrest on charges of murder. The Supreme Court also suspended José Luis Beltrán Rodríguez, magistrate of Conchagua, because an order had been issued for his arrest for offences relating to obstruction of work, interference with the functioning of the public administration and unlawful possession of weapons. Earlier, the Office of the National Counsel for the Defence of Human Rights had found the Conchagua magistrate guilty of violating the right to due process.

212. Until such time as a political will, enjoying the consensus support of all political and social sectors, exists for the functional restructuring of the judiciary, it is important that the normative development provided for in the peace agreements should be strictly consistent with the spirit and the letter of those agreements.

213. To contribute to this aim, the ONUSAL Human Rights Division has signed a cooperation agreement with the Supreme Court of Justice in which, inter alia, ONUSAL undertakes to assist in making a comprehensive analysis of the situation of the administration of justice and the court declares its readiness to facilitate the active verification work being done by ONUSAL with respect to the complaints it receives of violations of human rights.

214. The Human Rights Division is also promoting a programme of activities designed to help improve the means of judicial protection of human rights and ensure respect for the rules of due process, aimed directly at judges and magistrates. These activities include the organization of basic courses in human rights, criminal law and criminal proceedings. In addition, in the area of publications, steps are being taken to encourage the drafting and publication of illustrative texts to reinforce the technical training of judicial officials.

215. Participation by independent lawyers, lawyers from non-governmental organizations, professors of law at the various universities, lawyers from the various trade unions and officials of State institutions linked to the Public Prosecutor's Office and other related institutions is also being encouraged, with a view to considering and discussing fundamental aspects of constitutional and criminal justice in order that Salvadorian professionals may together seek appropriate solutions and recommendations for the formulation of policies and changes designed to bring about judicial reform in El Salvador.

1. Act on the National Council of the Judiciary

216. In accordance with the provisions of the peace agreements, on 11 December 1992 the Legislative Assembly approved the new Act on the National Council of the Judiciary.

217. In the Mexico Agreements of 27 April 1991 (A/46/553-S/23130, annex) and in the Peace Agreement of 16 January 1992 (A/46/864-S/23501, annex), it was agreed to restructure the National Council of the Judiciary so that its composition would fundamentally guarantee its independence from the organs of the State and from political parties. It was also agreed that its membership should include not only judges but also sectors of Salvadorian society that were not directly connected with the administration of justice.

218. For now, it cannot be said that the Council's independence is fully guaranteed. Article 7 of the Act states that members of the Council and their alternates shall be elected by the Legislative Assembly by public roll-call vote, by a qualified two-thirds majority of elected deputies; they shall be elected for a three-year term and may not be re-elected for the period immediately following. That provision is based on article 187, paragraph 3, of the Constitution.

219. This constitutional provision, which has now been taken up in the said Act seems to run counter to what was agreed to at Mexico, since it does not appear satisfactorily to guarantee the independence of the Council from the organs of the State and from political parties. In the absence of legislative limitations, it is conceivable that two or more political forces representing the required two-thirds majority in the Assembly might share the Council's posts

between them, thereby accentuating the partisan nature of justice. This possibility, in the context of the reforms, could have a devastating effect.

220. Another factor affecting the Council's independence from the Supreme Court of Justice concerns the Council's budget. Under the Act, the Council will have to draw up a proposed budget and submit it to the Supreme Court of Justice in July of each year; any adjustments in budgetary planning which the Supreme Court of Justice deems necessary will be made in consultation with the Council. It would be wiser to preserve the Council's budgetary independence and avoid the possibility that the Supreme Court of Justice might make changes that could affect the Council's independence.

221. Furthermore, the composition of the Council is not entirely in accordance with the peace agreements. According to the Act, the Council will have 11 members: 2 lawyers proposed by the Supreme Court of Justice, who may not be magistrates; 1 permanent magistrate of second instance; 1 permanent judge of first instance; 3 practising lawyers; 1 lawyer teaching at the Faculty of Law and Social Sciences of the University of El Salvador; 2 lawyers teaching at other faculties, schools or departments of law at duly-authorized private universities; and 1 member of the Public Prosecutor's Office.

222. The Mexico Agreements, however, stipulate that the Council's membership should include not only judges but also sectors of society not directly connected with the administration of justice. The Act approved by the Legislative Assembly limits membership in the Council to persons linked to the judicial system and overlooks the fact that there are other sectors of society not directly connected with the judicial system, such as municipalities and various social organizations, which could also contribute to the Council's independence and to improving the system for the administration of justice. It was to these social actors that the peace agreements were referring as one of the sectors that should be included in the Council.

223. Moreover, the system for selecting members of the Council, as regulated by the Act, has some shortcomings; in particular, the procedure for selecting the representatives of the Supreme Court of Justice and the Public Prosecutor's Office is not regulated, leaving the risk that the selection may not be the most appropriate for the performance of the Council's important function.

224. It would be advisable to make a few legislative changes to the system of appointing magistrates and judges so that it is fully consistent with the agreements. The National Council of the Judiciary itself should be responsible for both selecting and appointing magistrates and judges (this is currently done by the Legislative Assembly and the Supreme Court of Justice, as appropriate). Members of the National Council of the Judiciary should be appointed directly by the institutional or social sector they represent, rather than through the Legislative Assembly. In both cases, it would be advisable to revise the amended texts of articles 186 and 187 of the Constitution of the Republic.

225. In order to give the National Council of the Judiciary greater latitude in selecting judges for the Supreme Court of Justice, it would be advisable to revise the criterion established in article 186 of the Constitution for drawing up the list of candidates (according to that article, at least half of the names on the list must be put forward by associations representing lawyers).

226. The preferential criteria to be used in the annual evaluation of magistrates and judges to assess their professional performance include number of judgements handed down each month, observance of time-limits in judicial proceedings, efficiency and swiftness of the court's work, judicial decisions revealing negligence or inexcusable ignorance, penalties imposed, overall running of the court, the official's punctuality and the order and discipline observed. There are glaring omissions: other factors which could have been considered preferential include the contribution of the person being evaluated to juridical science, professional training, the quality - not just the number - of judgements handed down, concern for the human rights of the accused and of the victims, which would make it possible to assess which person was best qualified to be a judge or magistrate given the demands of the judicial function in a democratic State governed by the rule of law. This is even more important if such evaluations are decisive in decisions taken by the Supreme Court of Justice on promotions on an equal footing.

227. The Act says very little about so important a matter as the Judicial Training School, leaving it to the Council to decide on regulations pertaining to the School's organization, functioning, training courses and programmes and the best means for securing its goals. This cannot be said to ensure the steady improvement in the professional training of judges and other judicial officials, referred to in the Mexico Agreements.

2. Amendments to the Career Judicial Service Act

228. As a consequence of the Mexico Agreements, the Legislative Assembly considered it necessary to amend the Career Judicial Service Act to bring it into line with the principles underlying the constitutional reform and to define the administrative structure of the career judicial service.

229. The Mexico Agreements of 27 April 1991 stipulate that the secondary legislation shall contain provisions to ensure that admission to the career judicial service is based on mechanisms guaranteeing objective selection, equal opportunities for all candidates and the selection of the best qualified candidates. Such mechanisms shall include competitive examinations and attendance at the Judicial Training School.

230. Nevertheless, the amendments made thus far, stemming from a proposal by the Supreme Court of Justice, merely guarantee the Court itself increased powers with respect to, inter alia, the administration of the career judicial service, the management of the budget of the judiciary and the imposition of disciplinary penalties on judicial officials.

231. Other aspects of the legislative reform also indicate that the Mexico Agreements have not been fully implemented with respect to the system for selecting candidates to the posts of judge and magistrate who, according to the Agreements, must necessarily satisfy the requirement of attendance at the Judicial Training School. The Act does not define the basic profile required, the type of competitive examination or the nature of the training which the school is to provide. It refers only to technical selection procedures, which will include competitive examinations and attendance at the Judicial Training School in the case of candidates for magistrate and judge.

232. The Act specifies that, if the candidate guarantees that he is qualified for the post, he does not have to attend the Judicial Training School. Likewise, promotions will be decided on the basis of evaluations of performance in the current post, aptitude for a higher post, examination results and seniority. It then goes on to say that the competent court or official may instruct the National Council of the Judiciary or the Judicial Training School to organize whatever competitive examination or tests it deems relevant. In short, the inadequacy of the amendments to the Act are obvious in that no clear criteria have been established to ensure that selection procedures are basically uniform and that they are not so vague that they can be manipulated.

233. At present, there is a consensus as to the inadequacy of these reforms; this led recently to the establishment of a technical subcommittee in the Legislative Assembly consisting of representatives of the various political parties. Its task is to draw up a preliminary bill on the career judicial service which will shortly be taken up in the Legislative Assembly.

3. Preliminary bill on the establishment of a Criminal Investigation Agency

234. One of the most glaring deficiencies of the criminal justice system, to which the Division's reports have repeatedly drawn attention, is the absence of a competent, independent body under civilian control capable of investigating crimes efficiently. The Commission for the Investigation of Criminal Acts, which is currently operating as part of the structure of the executive branch, has not carried out this function satisfactorily, nor is it doing so now.

235. One of the constitutional reforms approved in 1991 assigned functional control over an agency responsible for investigating crimes to the Attorney-General of the Republic. On the basis of this constitutional provision, in December 1992 the Ministry of Justice presented for public discussion a preliminary bill establishing a new criminal investigation agency attached to the Office of the Attorney-General of the Republic.

236. However, peace negotiations continued after the constitutional reform and when the agreements on the National Civil Police (PNC) were adopted, the Government and FMLN agreed that the PNC would be the only armed civilian police force. Subsequently, the Legislative Assembly, in order to give effect to those agreements, approved the Act on the National Civil Police developing the functions of that police organ and legally establishing the Criminal Investigation Division which was to carry out its activities under the functional control of the Attorney-General of the Republic and was to be responsible for investigating criminal acts.

237. By contrast, the preliminary bill put forward by the Ministry of Justice, to which we referred earlier, would establish a police-type organization distinct and separate from the PNC and answerable to the Attorney-General of the Republic. The bill provides that the criminal investigation agency would be empowered to investigate, detain and charge accused persons and also to carry out inspections, searches and seizures. Agents of that agency would act on their own initiative or upon notification or judicial order in regard to publicly actionable offences, and only on judicial order in regard to privately

actionable criminal proceedings. They would be authorized to bear arms and to use them if they encountered armed resistance. The bill also includes a provision authorizing the use of agents of the agency for activities other than their normal functions in the event of a national emergency.

238. All this would make it an organization parallel to the National Civil Police, answerable to the executive branch and therefore not subject to the legislative controls provided for the National Civil Police.

239. The proposal contradicts the peace agreements, which establish that the National Civil Police "shall be the only armed police body with national jurisdiction" (see A/46/864-S/23501, annex, chap. II, para. 1.A.). Duplicating the functions of the National Civil Police not only violates the agreements but could, as has been pointed out by the Legal Protection Office of the Archdiocese of San Salvador and by other national institutions and personalities, lead to a dangerous undermining of the National Civil Police and give rise to problems of institutional competence that would detract from the efficient investigation of crimes.

4. Constitutional justice, question of habeas corpus

240. In El Salvador, the institution of habeas corpus has a long constitutional tradition which, unfortunately, has largely been historical and formal in nature. 11/ Currently, articles 11, 174 and 247 of the Constitution regulate habeas corpus.

241. The Constitutional Procedures Act now in effect regulates habeas corpus in an excessively formalistic manner, largely because it describes formulas for the findings to be made by the responsible official, known as the executing officer. In a significant number of cases, the executing officer refers the matter back to the Supreme Court of Justice or to the court of second instance, as appropriate, for a determination once more than 30 days have elapsed, by which time the violation has either ceased or become irreparable.

242. Although the remedy of habeas corpus is universally considered to be a swift and timely mechanism, preferable to any other mechanism under ordinary law for safeguarding the liberty and integrity of the person, the way in which it is regulated in El Salvador's legal order prevents it from being at all effective. The fact that it has to be presented to courts of second instance (which are located only in departmental capitals and are therefore a long way from most towns) and that these courts delegate the execution of habeas corpus to so-called executing officers, who in many cases are not lawyers, means that this procedure is completely inappropriate for safeguarding against violations of fundamental rights.

243. Consequently, there are currently two major problems with regard to habeas corpus. The first and main one is normative, in that the procedure provided for handling habeas corpus is inappropriate for achieving the desired end (immediate cessation of the violation). The second, which is a direct consequence of the first, is the systematic failure to observe the time-limits provided under the law, which are in themselves too long.

244. In February 1993, just as this report was being drafted, the Human Rights Division organized a round table on constitutional justice with the participation of a variety of independent lawyers, university professors and representatives of State, trade union and non-governmental agencies. Recommendations were advanced by those presenting papers and those participating in the event, the idea being that the recommendations and suggestions would be forwarded to the Salvadorian authorities within the context of the powers of ONUSAL, so that they might be evaluated and taken into consideration when making the legislative and institutional changes and reforms needed to improve the administration of justice in El Salvador.

B. The Office of the National Counsel for the Defence of Human Rights

245. The Office of the National Counsel for the Defence of Human Rights was established by the constitutional reforms of 31 October 1991, in fulfilment of the Mexico Agreements of 27 April 1991. Under the Constitution, the mandate of the Office is not only broad and protective of rights but it has also powers not enjoyed by most such institutions, in that it can institute administrative and judicial proceedings and has competence to investigate cases of human rights violations. The institution of the Office of the National Counsel in El Salvador thus reflects the most advanced criteria of international doctrine regarding the constitutional protection of human rights.

246. Now that the Office of the National Counsel has been operating for six months, it is possible to make an assessment; of course, this assessment can only be preliminary, given that the Office is a new institution designed to guarantee the protection of human rights during the transitional period and in the State governed by the rule of law to which Salvadorians aspire. Its first months were devoted primarily to matters of an organizational, technical and administrative nature and to efforts to consolidate its basic institutional and functional structures. Obviously, given the complexity and responsibilities of the Office, it could not be expected to produce results right from the start, since any process of integration of a new institution into the State and civilian society involves a period of creation and strengthening of human and technical capacities and this requires a minimum period of internal consolidation.

247. Now that this period of necessary internal institutional consolidation is largely over, the Office of the National Counsel has begun to show signs of activity which augur well for its ability to fulfil its constitutional mandate and live up to society's legitimate expectation that it will be able to play a substantive role in safeguarding human rights. In January 1993, the National Counsel for the Defence of Human Rights submitted a report on his activities for the period 27 July to 31 December 1992. The report contains statistics on complaints received by the Office. The breakdown of complaints according to type of violation is similar to the breakdown of complaints actively verified by ONUSAL. Complaints of violations of the right to life and liberty and integrity of person, combined with those relating to violations of the right to due process, account for the bulk of complaints declared admissible (approximately 90 per cent). 12/

248. Subsequently, the National Counsel, Mr. Carlos Mauricio Molina Fonseca, published a series of determinations by his Office, with the findings of specific investigations. 13/ In most of the cases investigated the Counsel determined the existence of violations of various categories of rights and identified those responsible for the violations.

249. This procedure, which is strictly in keeping with its legal and constitutional powers, is indispensable if the Office of the National Counsel is to carry out its mission to the full. The publication of a summary of the determinations in paid advertisements in the press reflects a definite determination to exercise its constitutional powers. The Division sees this initiative clearly as a first step in a process which may lead the Office of the National Counsel to assume a decisive role in safeguarding the population's human rights.

250. If this emerging trend becomes a sustained and systematic course of action, the Office of the National Counsel will be clearing the way for future effective oversight of legality in respect of human rights, and both State and society must give it their unreserved support. To this end, the Office of the National Counsel must immediately be given adequate budgetary independence for, without that, its functional autonomy will always be at risk.

251. The Human Rights Division coordinates its activities on a continuing basis with the Office of the National Counsel, and one of its priorities is to channel to that Office whatever technical cooperation the latter may need, as well as to exchange information regarding experiences, methods and techniques with respect to the investigation and protection of human rights. Given the prospect that local branches of the Office of the National Counsel may be established in certain departmental capitals, this line of cooperation will be particularly important.

252. Of course, much remains to be done before the Office of the National Counsel can fully assume its constitutional functions, particularly as regards the implementation of its plans to establish a presence throughout the country and to improve its investigative methods and practical procedures so as to link up its activities with the population and non-governmental organizations.

C. Human rights components of the reform of the armed forces and the security forces

1. Formulation of a new military doctrine and restructuring of education in military training

253. The peace agreements define the institutional and legal framework within which the armed forces must function in a State governed by the rule of law. The constitutional reforms reproduce those elements which give the armed forces a specific mission, namely, to defend the sovereignty of the State and the integrity of its territory, that mission being inseparable from democratic values and strict respect for all parts of the Constitution. These functions of the armed forces are limited and exclusive. The armed forces have no responsibility for the maintenance of public order, which is the function of the National Civil Police. The President of the Republic may use the armed forces

for the maintenance of internal peace only in exceptional cases and in accordance with the provisions of the Constitution (art. 212).

254. From the standpoint of their institutional definition, the armed forces form part of the executive branch and are subject to the authority of the President of the Republic; they are professional, apolitical and non-deliberative. As an institutional structure of the State governed by the rule of law, their actions must be consistent with respect for human dignity and their training must include awareness with regard to respect for human rights.

255. The peace agreements governing the armed forces established three commitments with human rights components:

(a) Redefinition of the doctrine of the armed forces so that it is consistent with the principles deriving from the rule of law, the primacy of the dignity of the human person and respect for human rights;

(b) Revision of the educational system of the armed forces, based on new training which emphasizes the pre-eminence of human dignity, democratic values and respect for human rights;

(c) Reform of intelligence services, their function being to ensure the common good and respect for human rights.

256. Verification of these agreements indicates that they have been carried out at the first, global level. Nevertheless, all three objectives are processes the full implementation of which, in institutional terms, requires more time than was allowed in the agreements for the first level of application. This was the parties' understanding and the process continues.

257. The Academic Council of the Military College was appointed by the President of the Republic on 31 July 1992; it comprises an equal number of civilian and military representatives, chosen on the basis of pluralism and representing the various national political tendencies. It is working efficiently and there is a growing consensus among its members. The admissions system has been changed, as has the curriculum, which now includes courses on human rights.

258. In addition, a Doctrine Command of the Armed Forces has been set up to formulate military doctrine and to coordinate the reform of all the training and advanced training schools and establishments which make up the educational system of the armed forces. Human rights as a subject for study is now part of the curriculum in officer training courses, in the advanced course for infantry and other branches and in the staff course and the command and general staff course. In addition, there are plans to establish a centre for political and strategic studies for the High Command, with the participation of civilians; its mission will be to generate a current of organic thought concerning the new democratic military doctrine.

259. With regard to the restructuring of the State intelligence services, the National Intelligence Department has been formally abolished and replaced by the State Intelligence Agency headed by a civilian. It is essential that, in the new intelligence agency, normative and functional elements be established that will enable the State Intelligence Agency to carry out its functions as provided

for in the peace agreements; the latter define State intelligence as "a State function for the common good, free from all considerations of politics, ideology or social position or any other discrimination; and strict respect for human rights" (A/46/864-S/23501, annex, chap. I, para. 7.B).

260. This entire process has just entered an intermediate phase of development and it will take time before the reforms result in an efficient system of professional training based on a democratic conception of the function of the armed forces. Clearly, this will tie in with the broader process of purification and reduction of the armed forces and effective demilitarization of the State and of society.

261. Realizing the importance of full implementation of the human rights components of the agreements relating to the armed forces, the Human Rights Division has established the issue of human rights in the military as one of its priorities and, to that end, has included human rights experts among the specialists working at its main office with a view to carrying out a broad scheme of cooperation to help reformulate military training and doctrine in the light of the new constitutional functions of the armed forces and the norms applicable under the rule of law.

2. Formation and functioning of the National Civil Police

262. Attention was drawn in the preceding paragraphs to the all-important role to be played by the National Civil Police in the transitional process and in consolidating the rule of law. The Peace Agreement defined the profile of the National Civil Police as a public security force "which is designed, structured and operated as a civilian institution with the purpose of protecting and guaranteeing the free exercise of the rights and freedoms of individuals; preventing and combating all types of crimes; and maintaining internal peace, tranquillity, order and public security" (ibid., chap. II, para. 4.A).

263. There have been delays in getting the National Civil Police started; the goals originally established were very ambitious since they envisioned the National Public Security Academy as starting to operate just 10 weeks after the signing of the agreements, and the deployment of a force of 5,700 police within a period of two years.

264. Effective functioning of the National Civil Police is an important element in the implementation of the peace agreements. It must have clear and precise priority, particularly given the problems of crime and lack of public safety that exist and the impact they may have on the consideration of alternative means of transition which may not necessarily respect the agreements. This makes it all the more urgent to devote every priority and all possible resources to ensuring that it is set up effectively.

265. Part of the problem stems from the fact that the National Public Security Academy has had to deal with a variety of issues, ranging from infrastructure to finances, which have limited its ability to act. At the same time, controversial issues have arisen regarding curricula, teaching staff and the body of advisers. This has prompted FMLN to take a negative view of the National Public Security Academy and to propose that it be restructured.

266. The Human Rights Division considers that the proper functioning of the National Civil Police, including the National Public Security Academy, is an essential part of the peace process and a key to creating the social and institutional conditions for the enjoyment of human rights by the population. Accordingly, it is beginning to give priority in its current plan of work to cooperation with the National Public Security Academy on all matters relating to the achievement of the profile of a civilian police force as defined by the agreements and to the provision of human rights training for that force.

D. Information and education campaign on human rights

267. As stated in the previous report of the Director of the Human Rights Division (A/46/955-S/24375), during the first year of the Mission, the Division's educational activities focused on promoting public and institutional awareness with regard to respect for and protection of human rights, in an effort to create a climate that would help the Mission carry out its verification functions more effectively.

268. Once the Peace Agreement was signed, the Division focused on promoting reconciliation and peacemaking, which were associated with the transitional period initiated by El Salvador towards the end of the armed conflict. These areas of focus were fundamentally linked to implementation of the agreements, the country's move towards democracy and the consolidation of a State governed by the rule of law.

269. Drawing on the experience gained, the Division's education and information activities during the period covered by this report were aimed chiefly at strengthening Government institutions having a key role to play in respecting and guaranteeing human rights. These included the Office of the National Counsel for the Defence of Human Rights, the armed forces and the National Civil Police.

270. At the civilian level, a National Committee for the Promotion of Human Rights and Peace Education was established in August 1992, bringing together 15 governmental and non-governmental institutions and bodies. This Committee, which is the product of a concerted national effort in the field of human rights education and reflects the importance attached to that field by the bodies concerned, enjoys the active and ongoing support of the Division.

271. Given the new situation created by the ending of the armed conflict, there is a growing need for sustained efforts in the field of human rights education, particularly in the area of formal education and in those sectors of society having special responsibility for the creation of a human rights culture. Non-governmental organizations must play a leading role throughout this process.

272. In the formal sector, the Minister of Education, with the cooperation of various international organizations and bodies, is completing work on a human rights education project which, if promptly implemented, will do much to foster a pro-human rights attitude among teachers and students. In the civilian area, the Division is calling upon non-governmental organizations to coordinate their human rights education activities, particularly among the masses and the most vulnerable social groups. The Human Rights Division has made this area one of its own current priorities.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

273. Looking objectively at developments in the human rights situation in El Salvador during the eight months covered by this report, it would seem that the situation is gradually improving. If one compares the current situation

with the situation that existed prior to the signing of the peace agreements, the progress is obvious. It is reflected in certain definite trends, such as the virtual absence of enforced disappearances or instances of torture during the period covered by this report. Nevertheless, disturbing violations, made all the more serious by their intensity and the means by which they are committed, persist, especially violations involving the right to life, integrity of person and liberty. All of this is taking place in an atmosphere of public insecurity created by such unlawful activities and the high number of concomitant fatalities.

274. Violations of the right to life can be seen in the many cases in which evidence of criminal acts coincides with political motives, making their classification difficult. Instances of death continue to occur which, while considerably fewer in number, can reasonably be shown to have had political motives and can be equated with summary executions. However, there is no government policy of complicity with such acts. Violations of the right to life are also evident in the criminal behaviour displayed by illegal organizations that dispense "private justice".

275. Death threats have been uncommonly frequent as peace takes hold in El Salvador. Arbitrary detentions for petty misdemeanours are also widespread and systematic, as are violations of due process.

276. In a society with no strong tradition of balanced labour relations, infringement of the right to trade union freedom and recurrent regulatory and procedural obstacles to labour rights have continued to affect the enjoyment of these rights, seriously prejudicing the rights of workers. Yet, in another indication of the catalytic effect of the peace agreements, the Government, workers and employers have agreed on a social contract calling for significant changes in labour relations, which, when implemented, should do much to reverse the trend observed during the period covered by this report.

277. In a State governed by the rule of law, the effective and independent administration of justice is the essential means of guaranteeing the legality of human rights. ONUSAL has verified that the administration of justice continues to be woefully inadequate and totally incapable of ensuring fulfilment by the State of its duty to guarantee those rights or respect for the right of citizens to due process of law (despite some progress in the regulatory area, evidenced by the legislative implementation of the constitutional reform of the judiciary).

278. The existence of certain isolated violations notwithstanding, the freedoms of expression and assembly and the exercise of political rights are widely enjoyed with State guarantees that are consistent with international standards.

279. An overview of the political, social and economic process in El Salvador shows that the peace agreements have had a decisive influence on the human rights situation. This improvement should be extended to the rights that continue to suffer significant and, in some cases, systematic violations. For the enjoyment of human rights, then, the State must fulfil its duties as guarantor, while citizens, both individually and collectively, must exercise their rights and duties.

280. The consolidation of current positive trends and the elimination of persistent violations will depend largely on the effective implementation of the peace agreements and consolidation of the structural and institutional reforms aimed at enabling the rule of law to function effectively in a demilitarized, reunified, reconciled and tolerant society schooled in democratic values and human dignity.

B. Recommendations

281. In the San José Agreement, the parties pledged to give prompt consideration to any recommendations made by ONUSAL. In the five preceding reports submitted by the Director of the Human Rights Division to the Secretary-General and the General Assembly, a comprehensive set of recommendations was made, the implementation of which was and is indispensable to the protection and promotion of human rights in El Salvador.

282. The Government has accepted some of these recommendations on an ad hoc basis, but the recommendations as a whole have yet to be dealt with in a manner consistent with the provisions of the San José Agreement. Most of the recommendations have not received due attention. This situation, which is hardly conducive to the promotion of human rights, was reviewed by ONUSAL and the parties to the San José Agreement. As a result of recent consultations, the Human Rights Division has identified a readiness on the part of both the Government and FMLN to appropriately and effectively address the recommendations contained in the various reports. In the short term, there are plans for establishing the consultative mechanisms required for systematic, effective and mutually agreed follow-up to the recommendations.

283. Given that most of the recommendations made by the Human Rights Division in its previous reports have yet to be dealt with properly, the Director of the Division considers it necessary to reiterate here that the recommendations continue to apply and must be implemented as a matter of urgency. The active verification carried out during the period covered by this report also prompts the following additional recommendations:

(a) In keeping with the thrust of the peace process, it is imperative that the Government complete, as soon as possible, the formalities required for the ratification of or accession to, as appropriate, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Inter-American Convention to Prevent and Punish Torture; the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; and the Convention on the Political Rights of Women. Likewise, the necessary steps should be taken for the ratification of Conventions Nos. 87 and 93 of the International Labour Organisation, on freedom of association and the right to organize;

(b) To enhance the effectiveness of international norms for the protection of human rights, the Optional Protocol to the International Covenant on Civil and Political Rights should be ratified and the compulsory jurisdiction of the Inter-American Court of Human Rights should be recognized;

(c) Bearing in mind the structural weaknesses in the administration of justice, and in keeping with the spirit of the peace agreements, a structural and functional reform of the judiciary is called for. This reform should entail a review of the functional structures of the judiciary, an immediate evaluation of all judicial officials, inculcation of a sense of ethics within the judiciary, a review of judicial procedures, a re-evaluation of court administrative norms and the creation of a court inspection system;

(d) To improve criminal investigation in cases involving summary or arbitrary executions, and until the Criminal Investigation Division of the National Civil Police begins to function, immediate transitional measures are necessary. It would be useful, for example, to set up a special commission of inquiry devoted exclusively to the investigation of homicides in which there is a reasonable likelihood of political motives, including those classified as political murders as a result of ONUSAL verification. The commission could draw on the existing technical capacity of the Commission for the Investigation of Criminal Acts; it should be placed under the authority of the National Civil Police, in keeping with the spirit of the peace agreements, and should enjoy the support of the Office of the Attorney-General of the Republic, the Office of the National Counsel for the Defence of Human Rights and the Institute of Forensic medicine. In view of its purpose, the commission should conduct its investigations taking into account the relevant norms and the Model Protocol for the Legal Investigation of Extra-legal, Arbitrary or Summary Executions, adopted by the United Nations;

(e) The effective functioning of the remedy of habeas corpus is essential to the protection of human rights in El Salvador. To this end, legislative reforms and an information and education campaign are vital. Legislative reforms should focus on the notion that habeas corpus is guided expressly by the principles of speed, timeliness and effectiveness. As this remedy is supposed to give applicants full access to the courts, jurisdictional oversight which is broader and more accessible than that currently provided (by the Constitutional Chamber of the Supreme Court) must be ensured. Urgent revision of the Constitutional Procedures Act on the basis of existing bills is not inconsistent with the planned amendment of the Constitution. In accordance with the international agreements to which El Salvador is a party, specific provision should be made to ensure that remedies (habeas corpus and amparo) cannot be suspended or their use curtailed under any circumstances, including during states of emergency;

(f) Bearing in mind the positive trends that have emerged in the area of enforced disappearances and torture and the need to adopt measures to consolidate these trends, special criminal legislation must be drafted and adopted which defines both of these offences and establishes penalties and procedures commensurate with their seriousness when the perpetrators are members of the security forces or the authorities;

(g) In order to reduce and eliminate ill-treatment, legislation must be drafted which regulates clearly the official conduct of law enforcement officials. In addition, abuses of power must be punished, limits must be placed on the use of force and firearms by such officials and behaviour considered to constitute a criminal act by a public official must be more clearly defined.

Such officials must also receive systematic and ongoing instruction in the exercise of police functions and the rights of detainees;

(h) Concerning the need to abolish the systematic practice of arbitrary detention for petty misdemeanours, the following steps are recommended:

(i) The Police Act of 21 July 1886, which remains in force, should be repealed, as it perpetuates a penal law which focuses on the author of an act rather than on the act itself; it is this latter concept that applies in democratic countries, where a perpetrator is punished for his actions, not his personal characteristics. The punishment of vagrancy and other petty misdemeanours listed in this Act is unconstitutional and runs counter to international rights norms. Once the Act has been repealed, all petty misdemeanours should be investigated and punished by magistrates;

(ii) Until the necessary changes are made to bring Salvadorian legislation into line with the constitutional and international order, judges trying petty misdemeanours should apply Decree No. 457 (Act governing the procedure for administrative detention or the imposition of administrative fines). Another temporary measure would be the drafting of an administrative regulation that would complement the aforesaid Decree by giving priority to some of the most common and serious petty misdemeanours, spelling out the functional competence of the authorities, ordering full respect and guarantees for the rights of perpetrators and specifying the penalties applicable to police and municipal authorities who fail to follow the procedure stipulated in Decree No. 457 or exceed their authority;

(i) A compensation fund for the victims of serious human rights violations must be established. This fund should be funded from State resources, national and international donations and other resources as appropriate. In addition, a brief procedure will have to be established for determining the type of compensation to be awarded and who the recipient(s) shall be;

(j) Criteria for membership on the National Council of the Judiciary and the responsibilities of the Council must be stated more clearly and the necessary legislative changes made. Council members should be appointed directly by the institutional or social sector they represent and not by the Legislative Assembly. Both the selection and the appointment of magistrates and judges should be the exclusive domain of the National Council of the Judiciary. In order to give the Council greater latitude in choosing Supreme Court judges, it is proposed that the requirement that at least half of the names on the list of candidates be put forward by lawyers' associations should be abolished;

(k) The provisions of the National Council of the Judiciary Act which place the Judicial Training School entirely under the authority of the Council must be fully implemented. The School's administrative and budgetary independence from the Supreme Court of Justice must be ensured. The School must be able to provide magistrates and judges with academic and specialized training that will foster a critical approach to the problems encountered in the administration of justice. Judicial officials must also be provided with all elements required to foster concern and respect for the human rights of both the

accused and the victim as well as other considerations that will enable them to grasp the social function of the administration of justice;

(l) A criminal procedures code that reflects basic human rights principles is incompatible with the so-called extralegal confessions made to auxiliary organs. To eliminate this practice, the adoption by the Legislative Assembly of the bill drafted for this purpose by the Ministry of Justice must be promoted;

(m) The disciplinary regime provided for under the Career Judicial Service Act should regulate the obligation of the Supreme Court of Justice of its President, as appropriate, to investigate formally and promptly any irregularities or violations of the guarantee of due process of law, particularly those identified by the National Counsel for the Defence of Human Rights in the determinations issued by him in accordance with the law;

(n) Since violations of due process tend to be systematic, it is imperative that the Supreme Court of Justice or its President, as appropriate, act on violations verified by ONUSAL and brought to its attention by the Human Rights Division by taking the necessary steps to investigate and punish violations provided for in the Career Judicial Service Act for which responsibility has been established, particularly in the case of the following violations:

(i) Failure by judges of first instance personally to conduct the requisite pre-trial proceedings in all cases giving rise to serious social unrest and especially in cases of attempted murder;

(ii) Failure to observe the rules invalidating any statements made under threat or any type of duress;

(iii) Illegal or arbitrary detention, and particularly any failure to perform duties by omission;

(iv) Failure to order judicial inspections, forensic examinations or autopsies in cases of violent or sudden death, as required by law;

(v) Serious irregularities or violations of the rights of prison inmates and detainees in general;

(vi) Serious delays in the administration of justice occasioned by pre-trial detention for periods exceeding the time-limits set for proceedings;

(o) Bearing in mind the restrictions placed on freedom of association, trade union freedoms and the enjoyment of workers' rights, as well as the expressed readiness of the State, employers and workers to rectify this situation within a framework of economic and social consultation, it is imperative that the Ministry of Labour, as a necessary expression of its confidence in labour consultation, help ensure the granting of legal recognition to trade unions. In general, restrictive and discriminatory practices affecting the exercise of trade union freedoms and labour rights must be eliminated;

(p) Bearing in mind the important role played by the International Labour Organisation and, in particular, its Committee on Freedom of Association in safeguarding trade union rights, the Government is urged to authorize a mission of direct contact between El Salvador and that Committee, in accordance with the Committee's repeated requests;

(q) Ongoing efforts to formulate the new armed forces doctrine and modify military training in the various military schools must be developed and pursued. In stating the objectives and anticipated results in both areas, it would be useful to know what progress has been made and what the ultimate goals of such reforms are. At the same time, it is imperative that the human rights component not be reduced to the mere provision of basic information about the ethical and legal aspects of human rights, but that it be an integral part of officer training; this means that human rights should not be viewed only as an academic course but as a qualitative component of the new military training;

(r) The recovery of military weapons that have fallen into the hands of private individuals and are generally used for criminal purposes must be expedited. Likewise, it is essential that greater control be exerted over the use of military weapons by personnel on active duty. In this connection, programmes to reintegrate former members of the armed forces and demobilized members of FMLN must also be expedited;

(s) In the new era created by the ending of the armed conflict, the development of a human rights culture is seen as vital to the consolidation of civilian society and the rule of law. Thus, the introduction into the formal educational system of a human rights education policy and specific projects in that field is indispensable. The ONUSAL Human Rights Division appeals to the international community to provide financial and technical cooperation for the efforts which the Ministry of Education has begun in this area with the help of various development cooperation agencies;

(t) The expansion and strengthening of the Office of the National Counsel for the Defence of Human Rights is essential to the consolidation of the peace process and the affirmation of the rule of law. The Human Rights Division urges the executive and legislative authorities to give the Counsel's Office adequate budgetary autonomy. At the same time, the international community is urged to pay special attention to the Office's projects, particularly those aimed at enhancing its investigative capacity and expanding its presence throughout the country;

(u) With regard to human rights education in the informal sector, the State must lift all restrictions on the work of non-governmental organizations while granting them all facilities and support for their activities in the field of human rights education, especially among the most vulnerable groups of society;

(v) The Human Rights Division also urges international organizations and development agencies to extend technical and financial cooperation to Salvadorian non-governmental organizations to help make civilian society a more vital force for the protection and promotion of human rights. At the same time, the Government must respond to applications by non-governmental organizations for legal recognition as quickly and positively as possible, granting such

organizations particularly those active in the field of human rights all facilities and protection for them to do their job properly. Similarly, priority should be given to the investigation and punishment of any act of intimidation and coercion against non-governmental organizations.

Notes

1/ S/25006, annex I, p. 6, second paragraph.

2/ Notwithstanding the adoption of the law on measures and guarantees for the implementation of the land-transfer and farmland-tenure security programme and the interim law giving former combatants beneficiary status, it is in fact the agreements pertaining to land that are proving most difficult to implement.

3/ S/25006, annex I, p. 6, first paragraph.

4/ United Nations, Treaty Series, vol. 1144, No. 17955, art. 8, para. 3.

5/ Article 17, paragraph 2, of the Constitution of the Republic of El Salvador stipulates that: "In the event of the review of any criminal matter, the State shall compensate, in accordance with the law, the victims of any duly confirmed judicial error."

6/ See COPAZ, initial report of the Human Rights Subcommittee.

7/ See Luis Rodríguez Mananera, "Panorama de las alternativas a la prisión en los países de América Latina", Alternativas a la prisión en los países de América Latina y el Caribe, ILANUD, p. 27.

8/ Cf. the draft reform of the general provisions of the Argentine Criminal Code in Doctrina penal 1988, p. 168. This draft sets out the following scale: for periods of up to six months, each day of pre-trial detention is counted as one day of imprisonment; for periods of more than six months up to one year, each day of pre-trial detention is counted as two days' imprisonment; for terms in excess of one year up to 18 months, each day of pre-trial detention is counted as three days' imprisonment and for terms of more than 18 months, four days' imprisonment. See also the 1991 Peruvian Criminal Code (D. Leg. 35), art. 47.

9/ See Florida International University Centre for the Administration of Justice, "Diagnóstico sobre el órgano judicial en El Salvador", September 1987, and CORELESAL, "Problemática de la administración de justicia en El Salvador", December 1990.

10/ Statements by the President of the Supreme Court, Dr. Mauricio Gutierrez Castro, in "La Justicia Hoy", publication of the Salvadorian judiciary, No. 38, February 1993.

11/ See Bertrand, Tinetti, Kuri, Orellana, Manual de Derecho Constitucional, San Salvador, 1992, p. 333.

12/ See Office of the National Counsel for the Defence of Human Rights, "Report on the activities of the Office of the National Counsel for the Defence of Human Rights from 27 July to 31 December 1992", San Salvador, January 1993.

13/ See press release by the Office of the National Counsel for the Defence of Human Rights, San Salvador, February 1993.

ANNEX

Complaints of violations, June 1992 - January 1993

Complaints of violations declared admissible by ONUSAL, June 1992 - January 1993

COMPLAINTS OF VIOLATIONS	SS	SA	SV	SM	C	U	TOTAL
VIOLATIONS OF THE RIGHT TO LIFE							
Summary or arbitrary executions	49	28	17	9	3		106
Attempted summary or arbitrary executions	5			3		1	9
Death threats	57	51	20	5	24	8	165
VIOLATIONS OF THE RIGHT TO INTEGRITY OF PERSON							
Torture	4				1		5
Ill-treatment	74	70	21	13	2	17	197
Excessive use of force		3		1	1	1	6
VIOLATIONS OF THE RIGHT TO SECURITY OF PERSON							
Enforced disappearances		2	2	2	2		8
Abductions	12	4	3	3	1	4	27
Other threats	13	8		3			24
Other violations	100	22	16	16	6	2	162
VIOLATIONS OF DUE PROCESS OF LAW	19	9	5		6	2	41
Procedural guarantees	44	22	5	18	4	2	95
Right to be tried by a competent tribunal within a reasonable period of time	2	13		2	3	1	21
Right to defence	2	2	1				5
Right not to be coerced		1		1			2

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Right to multiple jurisdictional instances							
Right to justice	57	36	35	20	21		169
Legal obligation of the State to investigate and punish	4	3	3	2	4		16
Right to compensation	1	1					2
VIOLATIONS OF THE RIGHT TO PERSONAL FREEDOM							
Arbitrary detentions	91	49	22	18	11	13	204
Arbitrary detentions for petty misdemeanours	7	1			5	3	16
Procedural guarantees	31	5	2	4	2	1	45
Other violations	25	6	3	4	2		40
VIOLATIONS OF THE RIGHT TO FREEDOM OF EXPRESSION	1	1	1		1		4
VIOLATIONS OF THE RIGHT TO FREEDOM OF ASSOCIATION	2	2					4
Right to associate freely	15	2	4	2		1	24
Freedom of assembly					1		1
Trade union freedom	9		2	1	1		13
VIOLATIONS OF THE RIGHT TO IDENTITY DOCUMENTS							
To obtain personal identification documents		2			1		3
To obtain civil status documents							
OTHER RIGHTS VIOLATED	23	9	9	5	1		47
SUBTOTAL	647	352	171	132	103	56	1461
VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW							

Recruitment of or participation by children under 15 in hostilities				5			5
Failure to protect or assist wounded and sick							
Failure to protect medical and religious personnel							
Failure to protect medical units and vehicles							
Attacks on emergency supplies							
Condemnation or punishment without sentencing by an independent or impartial tribunal							
Other violations				14			14
SUBTOTAL				19			19
TOTAL	647	352	171	151	103	56	1480

SS San Salvador Regional Office
SA Santa Ana Regional Office
SV San Vicente Regional Office
SM San Miguel Regional Office
C Chalatenango Subregional Office
U Usulutan Subregional Office

Complaints declared admissible by category of right violated June 1992 - January 1993

Violation	No. cases admissible	Per cent
Life, security, integrity	709	47.91
Due process	351	23.72
Personal freedom	305	20.61
Freedom of expression	4	0.27
Freedom of association	42	2.84
Personal documentation	3	0.22
Other	47	3.18
International humanitarian law	19	1.28
TOTAL	1 480	100.00

Distribution by region of complaints of violations of the right to life and integrity and security of person June 1992 - January 1993

		SS	SA	SV	SM	C	U	TOTAL
SUMMARY EXECUTIONS	%	46.23	26.42	16.04	8.49	2.83	0.00	100.00
	Cases	49	28	17	9	3	0	106
DEATH THREATS	%	34.55	30.91	12.12	3.03	14.55	4.85	100.00
	Cases	57	51	20	5	24	8	165
LIFE, INTEGRITY, SECURITY	%	44.29	26.52	11.14	7.76	5.64	4.65	100.00
	Cases	314	188	79	55	40	33	709
TORTURE	%	80.00	0.00	0.00	0.00	20.00	0.00	100.00
	Cases	4	0	0	0	1	0	5
ILL-TREATMENT	%	37.56	35.53	10.66	6.60	1.02	8.63	100.00
	Cases	74	70	21	13	2	17	197
DISAP-PEARANCES	%	0.00	25.00	25.00	25.00	25.00	0.00	100.00
	Cases	0	2	2	2	2	0	8
ABDUC-TIONS	%	44.44	14.81	11.11	11.11	3.70	14.81	100.00
	Cases	12	4	3	3	1	4	27

SS San Salvador Regional Office
SA Santa Ana Regional Office
SV San Vicente Regional Office
SM San Miguel Regional Office
C Chalatenango Subregional Office
U Usulutan Subregional Office

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Complaints declared admissible by ONUSAL by category and month
June 1992 - Janaury 1993

	International humanitarian law	Torture	Ill-treatment	Kidnapping
June 1992	10	0	33	6
July 1992	4	3	26	7
August 1992	1	0	27	5
Sept. 1992	0	1	27	2
October 1992	0	0	21	1
November 1992	4	0	29	2
December 1992	0	1	19	2
January 1993	0	0	15	2
TOTAL	19	5	197	27

Verification by ONUSAL of admissible complaints
June 1992 - January 1993

VIOLATION	CONFIRMED	REJECTED	IN PROGRESS	TOTAL
Enforced disappearances	0	8	0	8
Abductions	6	11	10	27